DOCUMENT RESUME

ED 168 448 HE 011 170

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TITLE Legislative Authority Over Tenure in Washington State's Public Institutions of Higher Education.
INSTITUTION Washington State Legislature, Olympia. Senate.
PUB DATE Apr 70
NOTE 102p.; Not available in hard copy due to print quality
AVAILABLE FROM Washington State Senate, Legislative Building, Olympia, WA 98504

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS *College Faculty; *Employment Practices; Faculty Handbooks; *Government School Relationship; Higher Education; State Government; *State Legislation; *Teacher Employment; *Tenure
IDENTIFIERS Constitutions (Documents); Faculty College Relationship; *Washington

ABSTRACT

Broad legal constraints upon legislative authority over faculty tenure rights and the particular application of those constraints to the State of Washington are discussed. After defining tenure and tracing the creation of tenure rights, legislative authority over statutorily created tenure is discussed. Methods of legislative modification of tenure statutes may generally be accomplished in two ways, direct repeal of or amendment to the statute, and indirect repeal or amendment through inconsistent legislation. Whether by direct or indirect amendment, action taken by a state legislature to modify faculty tenure rights depends heavily upon the wording of the pertinent statutes creating the mechanism for award. Variations in statutory authorization for tenure award among higher education systems within a state may also limit a legislature's authority to modify tenure rights. Such a possibility is illustrated by the status of tenure rights in Washington. Appendices include excerpts from the U.S. and Washington State Constitutions; community college statute; four-year institution statutes; employment contract samples; faculty handbook excerpts; and K-12 statute. (SW)

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# LEGISLATIVE AUTHORITY OVER TENURE IN WASHINGTON STATE'S PUBLIC INSTITUTIONS OF HIGHER EDUCATION

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# LEGISLATIVE AUTHORITY OVER TENURE IN WASHINGTON STATE'S PUBLIC INSTITUTIONS OF HIGHER EDUCATION

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April, 1978

Higher education faculty tenure is a controversial subject today in the United States, both within and without the higher education community. Various social, philosophical, and economic forces such as declines in student enrollment and inflation are causing higher education institutions, state governments, and the public to seriously examine the contemporary nature and role of the institutions and higher education in general. As a result, fiscal and programmatic flexibility between and within institutions is increasingly essential, at the same time that the percentage of tenured faculty members in most colleges and universities is annually increasing. In Washington State the percentage of tenured faculty is the third highest in the nation.

As a legislature examines the issue of tenure rights for higher education faculty, a major question arises regarding the limitations on legislative authority over faculty tenure rights. Because the extent of such authority differs among states, and because there appears to be no comprehensive research on the subject for Washington or for other states, this report attempts to describe both the broad legal constraints upon legislative authority over faculty tenure rights and the particular application of those constraints to Washington State. Research into pertinent decisions by the various courts of appeal in the nation leads to the conclusion that in Washington, the legislature's scope of authority over faculty tenure rights differs between the community college system and the four-year institutions.

Faculty tenure in higher education is a complex topic, embodying in the mechanism of academic due process one of the oldest and most successful demonstrations of voluntary, organizational self-regulation; and encompassing a strong, pervasive tradition of shared governance between faculty and administration. No attempt has been made in the report to examine academic freedom, the origins and evolution of tenure, faculty collective bargaining, the contemporary status of tenure, or alternatives to and modifications of various tenure systems. These issues will be addressed in later papers.

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The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

Sweezy v. New Hampshire, 354 U.S. 234 (1957)

The concepts of academic freedom and tenure originated in continental Europe in the Middle Ages, when feudal systems were strong and the power of feudal lords, kings, and popes was nearly absolute. Because the non-secular universities were the guardians and forerunners of social development at that time, university scholars were subject to intense political pressure, and special safeguards against threat or physical harm were necessary to ensure them freedom of thought and speech.

Academic freedom and tenure were therefore a fundamental element of higher education when the new world was settled and universities were founded. While the United States Constitution granted more basic freedoms to all its citizens than were available to Middle Ages scholars, including first amendments rights of free speech and fourteenth amendment rights of due process, the nation originally and since has been committed to the concept that the university must operate without imposed intellectual boundaries because its teachers must be free to search for and reveal truth.

## The Definition of Tenure

Thomas Jefferson said that it is permissible to "tolerate error so long as truth is left free to combat it." Academic freedom basically involves a faculty member's freedom of research and the freedom to speak and write about the results and implications of that research.

Thus far the primary device for preservation of academic freedom is the tenure system. Tenure in schools, colleges, and universities in the United States has generally come to mean that after a specified probationary period, a teacher or faculty member acquires a permanent employment position from which he or she cannot be discharged without adequate cause, shown after procedural due process consisting of specific notice and a fair hearing.[1 2]

The requirement of specified cause for dismissal has been regarded as the heart of the tenure system,[3] and under most tenure statutes and collegiate policies, a faculty member who has acquired tenure rights cannot be dismissed or removed except for adequate cause. Nonrenewal or dismissal of a nontenured faculty member does not require demonstration of adequate cause.

The definition of "adequate cause" has been a difficult concept to describe precisely, both academically and legally. The Nevada court in

State ex rel. Richardson v. Board of Regents,[4] in ruling upon the removal of an associate professor by a board of regents pursuant to a tenure rule conceded to have the force of law, recognized the definition of "cause" as something of a substantial nature directly affecting the rights and interests of the public and necessarily touching the qualifications of the professional or his or her performance of duties, indicating that the holder of tenure is not a fit or proper person to hold that position.

Most courts, in ruling upon cases involving the definition of adequate cause for dismissal, have given particular attention to circumstances surrounding the charge and have made their decision on a case-by-case basis. Certain phrases, however, tend to emerge in many court cases and in many statutes which attempt to define adequate cause. Such phrases include "immoral conduct," "evident unfitness for service," and "insubordination."

The 1971 Commission on Academic Tenure in Higher Education, supported by a grant from the Ford Foundation, made this recommendation on adequate cause: "The commission believes that 'adequate cause' in faculty dismissal proceedings should be restricted to a) demonstrated incompetence or dishonesty in teaching or research, b) substantial and manifest neglect of duty, and c) personal conduct which substantially impairs the individual's fulfillment of his institutional responsibilities."[5]

In addition to the benefits of demonstration of adequate cause, procedural benefits not ordinarily available to nontenured faculty accrue

to tenured professors.[6] Procedural due process is a fundamental tenure right and institutions which do not follow specified procedural requirements in attempting to dismiss a tenured professor usually lose in court. Furthermore, in order to terminate a tenured professor, the employing institution must initiate the termination proceedings. Conversely, a nontenured faculty member challenging an institution's decision to nonrenew must not only prove that the institution has seriously violated his or her constitutional rights, but must initiate proceedings against the institution as well.

Procedural due process rights afforded tenured faculty generally involve these procedures: 1) the faculty review committee is to be given notice in writing of the proposed dismissal in time to ensure an opportunity to prepare for a hearing, 2) the faculty member is to reply in writing within a given time whether he or she wishes a hearing, 3) a hearing is held during which the faculty member has the opportunity to testify and to present evidence and witnesses as well as to hear and question adverse witnesses, and 4) the results of the hearing are made known to the faculty member for possible appeal to the courts.[7]

A tenure system consisting of cause, notice, and hearing may be either statutory or contractual at the nonconstitutional level. The primary emphasis of this paper will be upon tenure systems as statutorily created, although mention will be made of certain contractual aspects of tenure rights for college and university professors which constrain legislative action.

## Creation of Tenure Rights

The 1889 Federal Enabling Act, in creating four states from various territories, including Washington State from the Territory of Washington, stipulated ". . . [t]hat provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of said states, and free from sectarian control." (Section 4)

Many state constitutions, written under similar enabling acts, enjoin the legislature to establish "a thorough and efficient system of free public schools" (Maryland, Arizona, Oregon, New York and others). The Constitution of North Carolina declares that ". . . the people have the right to the privilege of education and it is the duty of the state to guard and maintain that right."

The writers of Washington State's Constitution, however, made one of the strongest statements seen in any state constitution about the responsibility of the state towards education: "It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste or sex." (Art. IX, § 1) The Constitution stipulates that ". . . the Legislature shall provide for a general and uniform system of public schools," and is more specific than other states in its definition of that system: "A public school system shall include common schools and such high schools, normal schools and technical schools as may hereafter be established." (Art. IX, § 2) And further,

"Educational, reformatory and penal institutions, . . . and such other institutions as the public good may require, shall be fostered and supported by the state, subject to such regulations as may be provided by law. The regents, trustees, or commissioners of all such institutions existing at the time of the adoption of this Constitution, and of such as shall thereafter be established by law, shall be appointed by the governor, by and with the advice and consent of the senate. . ." (Art. XIII)

The common schools are addressed by all states in their constitutions; many constitutions speak to higher education. A few states chose during the 19th century to elevate the autonomy of their universities to that of ". . . constitutional status. . . [by] providing in their constitutions for the vesting of exclusive management and control of the institution in the governing board, presumably to the exclusion of state executives and legislative officials."[8] Such universities have been said to ". . . constitute a fourth branch of the government, coordinate in some respects with the executive, legislative and judicial branches."[9]

In 1850, the University of Michigan was the first institution accorded constitutional status by the citizens, who were unhappy with legislative and gubernatorial intervention in basic and key university affairs. The institution was made a corporation and its governing board was elected and vested with the "general supervision" of the university. Since then the other Michigan state universities have been granted constitutional status and their governing boards vested also with ". . . the control and direction of all expenditures from the institution's funds."[10] Other states have at one time or another attempted to follow Michigan's lead, with varying degrees of success: Minnesota, California, Utah, Nevada, Missouri, Colorado, Idaho, Georgia, Montana, Alabama, Arizona and Louisiana.

Much of the line between permissible and unconstitutional involvement of executive and legislative officials in the policies and operations of an institution with constitutional status is unclear, varying from state to state, and occasionally from case to case, and is highly subject at times to judicial interpretation. Generally, the courts have tended to limit legislative regulation to fiscal and procedural or administrative concerns, leaving academic policy areas to regulation by the institution. Decisions in the policy areas of faculty hiring, tenure, and dismissal have thus far been solely the prerogative of the governing boards, not susceptible to modification by legislatures.

In certain states, then, the legislature has no authority over personnel policies for faculty. Most public colleges and universities, however, have been created by legislative enactment and even though they may be referred to in the state constitution, as they are in Washington State's Constitution, they have not been granted constitutional status and therefore are generally subject to legislative control. Tenure rights for faculty in private colleges and universities do not fall within the purview of the legislature.

Statutorily Created Tenure

The extent of regulation by legislatures on statutorily created colleges and universities is rather specific, given variations in particular cases, in aspects such as curriculum content[11] and student behavior.[12] The degrees to which some other aspects of public education are subject to legislative regulation have been defined only partially by the courts, who have been highly reluctant at times to interfere with the internal, educational, decision-making mechanisms of higher education.[13] The questions of how much and what kind of authority the legislature has over recruitment and tenure of teachers have become a rapidly developing area of law, particularly in the 1970's.

There are primarily three types of statutory authority under which a faculty member may become tenured. Legislatures in many states have passed statutes defining in some detail who shall be eligible for tenure, the length of probationary period, criteria for evaluation for award of tenure, procedures to be followed in removal of a tenured faculty member, causes for removal, and so forth. Tenure in the community college system in Washington State operates under such a specific statutory authority, RCW 28B.50.[14]

A second type of tenure statute creates a "contract status" for teachers, by which they acquire vested contractual rights under Article I, Section 10 of the United States Constitution. This type of tenure statute binds future legislatures to honor the provisions of the original act.[15]

A third type of statute grants authority to an institution's governing board to enter into contracts with faculty members. The boards of Washington's four-year institutions have such authority in RCW 28B.20.130, 28B.30.150, and 28B.40.120.[16]

Under this type of statutory authority, a board may adopt a tenure policy which then becomes a part of the employment contract. The method of award of tenure may be explicitly outlined in the employment contract or may be incorporated by reference to the institutional handbook which contains tenure regulations. An explicit statement in the contract that the rules in the faculty handbook are incorporated by reference into the contract, places in the contract, in effect, all definitions and substantive and procedural rights relating to tenure outlined in the handbook.[17] A more general reference in the employment contract that the rules and regulations of the institution are included in the contract also places those tenure definitions and rights in the contract as a result of the law of contract interpretation.[18]

An employment contract between an institution and a faculty member which may make no specific reference to either tenure rights or to the governing regulations of the institution will usually be found to contain the provisions of the handbook by implied incorporation, as part of the total employment agreement: ". . .[C]ontracts are written and are to be read, by reference to the norms of conduct and expectations founded upon them. This is especially true of contracts in and among a community of scholars, which is what the university is."[19]

Traditional methods of institutional governance and procedure figure strongly in a court's interpretation of an employment contract containing either explicit or implicit tenure provisions: "The law of contracts in most, if not all, jurisdictions long has employed a process by which agreements though not formalized in writing may be 'implied.'. . . Explicit contractual provisions may be supplemented by other agreements implied from the 'promisor's words and conduct in the light of the surrounding circumstances.' . . . and, '[t]he meaning of [the promisor's] words and acts is found by relating them to the usage of the past.'"[20]

The implied incorporation of university rules and regulations into employment contracts illustrates the significance that courts attribute to the internal governance structure of an institution. A college or university which tries to nullify a portion of its rules and regulations for purposes of an employment contract by disclaiming that portion in the contract may lose in court: "The Court. . . held that the disclaimer was ineffective in that the 'course of conduct' of the parties in regularly following the handbook regulations demonstrated that it. . . considered [it] to govern the University's relationship with plaintiff. . . in managing the University."[21]

Recent judicial interpretations of tenure rights have placed such great emphasis on institutional traditions and governance mechanisms, that court decisions in the early 1970's "created" heretofore unrecognized, nonstatutory methods by which faculty may obtain tenure rights.

Judicial Award of Tenure

In 1972, the U.S. Supreme Court held that when a faculty member has a concrete expectancy in future employment which has been fostered by the institution, he is entitled to procedural due process, a right usually reserved for tenured faculty, in order to prove the validity of his claim of such expectancy. This gives rise to the possibility of "de facto" tenure for faculty members, but only if individual circumstances are judged by the courts to warrant it in a particular case. De facto tenure has by no means yet assumed the level of a reliable mechanism by which faculty members may be granted tenure rights.

In Perry v. Sindermann[22] then, the Court held that a faculty member who had been employed by three different institutions in the Texas state college system for a total period of ten consecutive years, was entitled to an opportunity to prove the legitimacy of his claim that the existence of institutional rules and understandings promulgated by state officials gave him entitlement to continued employment absent adequate cause for dismissal. Proof of such entitlement, a property interest under the fourteenth amendment of the United States Constitution, did not entitle the faculty member to reinstatement to his terminated position, but did obligate college officials to grant a hearing at his request, where he could be informed of the grounds for his nonretention and could challenge their sufficiency.

The faculty guide in Sindermann stated that the administration ". . . wishes the faculty member to feel that he has permanent tenure as long

as his teaching services are satisfactory and as long as he displays a cooperative attitude toward his co-workers and his superiors and as long as he is happy in his work." Furthermore, operating guidelines written by the co-ordinating board of the state's college and university system stated that a person employed as a teacher in the system for seven years or more acquired a form of job tenure.

Therefore, because the faculty member in this instance apparently proceeded in his yearly contract relationship with the system under the assumption that renewal of his contract by the system after seven years was in effect a form of tenure, and because evidence supported the validity of his assumption, the Court declared he had a right to a hearing in which he might prove a legitimate expectancy of continued employment.

One of the key elements of the Sindermann decision is the Court's emphasis on the fact that, while an explicit tenure provision in a written contract is evidence of a formal understanding that supports a teacher's claim of entitlement to continued employment absent specific cause, the absence of such an explicit contractual provision does not always foreclose the possibility that the teacher has a property interest in re-employment. The institution's words and conduct in light of surrounding circumstances and traditional usage may imply a non-written agreement.

The degree to which case-by-case circumstances determine the right of a nontenured faculty member to a due process hearing was emphasized by the

Supreme Court in a companion case to Sindermann. Roth v. Board of Regents[23] concerned liberty rights under the fourteenth amendment. Roth claimed that his nonrenewal as a nontenured faculty member violated his liberty interest. The Court found that while such an interest might be adversely affected if the nonrenewal were based upon certain charges which would create a right to procedural due process (dishonesty, immorality or other impugnment of name, reputation, honor or integrity which stigmatized the faculty member or lessened his chances for future employment), mere nonrenewal of a contract did not so damage these liberty interests under the fourteenth amendment. In other words, Roth is usually interpreted to represent the general rule that nontenured faculty members have no property interest in continued employment and hence no right to a due process hearing.[24]

The possibility of tenure rights acquired by default now also exists because of recent court decisions; these decisions have tended to depend less on institutional tradition for determination of award than on specific, written tenure policies of the institution. In several cases, courts have granted tenure rights to faculty in institutions where the tenure provision in the employment contract called for award or dismissal after certain time periods and the institution failed to implement its decision to dismiss within the prescribed limits.

In Bruno v. Detroit Institute of Technology,[25] the Michigan Court of Appeals held that any professor meeting the specific, written qualifications of that institution had tenure even though the institution did not

affirmatively bestow that status and even though it elected to terminate the faculty member's employment. The Institute's policy provided that a faculty member ". . . shall be considered to hold tenure. . . if he or she 1) adequately performs his or her duties for three consecutive years, 2) is assigned the rank of associate or full professor, and 3) accepts a fourth annual contract."[26] The lack of criticism of performance during the employment period and yearly renewal of contracts and promotion of Bruno were considered to be inconsistent with an assertion of dissatisfaction by the institution.

In a similar case, Chung v. Park,[27] tenure was awarded by default to a faculty member by a federal district court in Pennsylvania. The state college concerned had a tenure policy providing for a three-year probationary period, after which the faculty member was to be either dismissed, tenured, or granted an additional two-year probationary period with specific requirements for being granted tenure at the end of that period. The court held that a professor not dismissed after three years of probation and given no specific goals to meet in the ensuing two years of probation should be granted tenure.

Other recent cases have held contrary to Bruno and Chung. In 1972, for example, a court reversed an arbitrator's award of reinstatement to a faculty member who had not been timely notified, holding that reinstatement would be tantamount to awarding tenure, a prerogative given to the institution's governing board by statute.[28]

While precedent for obtaining tenure by default has been set, the general legal status of earning tenure rights in this way is still uncertain. The courts, while perhaps less reluctant than in the past to make final judgment regarding educational policy issues when the internal governance mechanisms of an institution have been challenged, are still not eager to intervene between faculty member and institution.

## Legislative Authority Over Statutorily Created Tenure

The tenure rights awarded faculty may be either statutory or non-statutory in origin. As discussed above, some state constitutions ascribe constitutional status to institutions of higher education; in such states the legislature cannot modify the tenure rights of faculty in those institutions.

On the other hand, some state constitutions reserve to the legislature the power of changing, modifying, or abolishing policies relating to educational institutions, and faculty employment agreements written in states having such a constitutional provision may be subject to subsequent legislative modification of a tenure statute. The Pennsylvania Constitution gives such power to the Pennsylvania Legislature, and in Malone v. Hayden,[29] the Supreme Court of that state found that teachers' contracts incorporated the constitutional requirement which allowed subsequent legislative modification of the state tenure law, and hence modification of tenure contracts was possible. Such instances, however, depend heavily upon individual judicial interpretation of the state constitution and pertinent state statutes, and must be considered on a state-by-state basis.

The majority of states have chosen to provide a tenure system for faculty by enacting a state statute which may take one of several forms,

as discussed above. The strength and nature of tenure rights conferred by statute varies, however, and this necessarily affects whether or not those rights may be altered by subsequent legislation.

A tenure statute detailing probationary periods, criteria for award, removal procedures, etc., may include a statement of legislative intent conferring upon those teachers or faculty members who fall under the provisions of the act vested contractual rights which may not be unilaterally altered by subsequent legislation modifying or repealing the act. Courts have found such subsequent modification to be unconstitutional on the grounds that it violates teachers' rights under contract law in accordance with Article I, Section 10 of the U.S. Constitution.

The U.S. Supreme Court in Indiana ex rel. Anderson v. Brand ruled that the 1927 Indiana tenure act granted vested contractual rights to teachers because it stated that after five successive years of service a teacher continuing on into the sixth year of service entered into a contract with the school which ". . . shall be deemed to continue in effect for an indefinite period and shall be known as an indefinite contract."[30] Thus, a contract held by a teacher under the Indiana act remained in force until succeeded by a new contract signed by both parties or until cancelled by a statutorily specified procedure.

Statutes of this kind also preclude modification of vested contractual rights by governing boards since governing boards of statutorily created institutions are granted their powers by the legislature originally.

Tenure statutes which do not contain language indicating an intention to confer contractual rights on a faculty member generally have been found to declare the legislative policy that for as long as the legislature ordains, faculty qualifying for tenure under the act are granted protection from arbitrary or corrupt action by governing boards in dismissing or nonrenewing them without justifiable cause. Such statutes do not create vested contractual rights for faculty even though they become "permanent" faculty by virtue of being tenured.[31] If, then, a subsequent legislature elects to enact a law modifying the original statute, and if there is no evidence that a legislature specifically intended retrospective application of an amendatory act, it is presumed that legislative intent is to give the act prospective application, affecting tenure rights earned in the future.

On the other hand, if examination of the repealing or modifying act reveals that the legislature clearly did not intend the amending act to be confined merely to tenure rights acquired subsequent to that modifying act, and if the legislature also did not intend to bestow contractual rights upon faculty, courts have given the amending act retroactive effect, thereby affecting tenure rights earned under the original statute.[32]

In State ex rel. McKenna v. Milwaukee the U.S. Supreme Court held that the Wisconsin teachers' tenure statute merely declared legislative intent and so did not create a contractual right of employment. The act was therefore subject to repeal or modification by a subsequent

statute which, unless containing a qualifying or saving clause, repealed the act not only to prevent acquisition of future tenure rights but also to negate tenure rights already acquired by teachers under the repealed statute.[33]

The question of whether a particular statute detailing tenure rights for faculty holds retrospective application for faculty already tenured, as well as prospective impact on faculty yet to be tenured, is obviously a highly crucial one for tenured faculty. Usually, however, the extent of protection of the tenure law against subsequent modification by a legislature depends on the precise wording of both the original statute and the subsequent modifying legislation.

## Methods of Legislative Modification

Legislative modification of tenure statutes may generally be accomplished in two ways, direct repeal of or amendment to the statute, and indirect repeal or amendment through inconsistent legislation.

Direct repeal or amendment of the tenure statute by subsequent legislation has been mentioned above in Indiana ex rel. Anderson v. Brand, in which subsequent legislation modifying the statute was ruled unconstitutional because it violated the teacher's vested contract rights;[34] and in State ex rel. McKenna v. Milwaukee, where the court held the tenure act to be only a statement of legislative policy and therefore subject to action by subsequent legislatures.[35] In each case, the respective legislature enacted legislation directly modifying an existing tenure statute.

Had the Indiana legislature incorporated into the original tenure statute a provision making the tenure status of the teacher subject to abrogation or curtailment by amendment or repeal, the subsequent modifying legislation would in all likelihood not have been ruled unconstitutional.[36] And had the Wisconsin legislature included in the modifying act a saving clause in favor of tenure rights acquired prior to the subsequent act, such previously acquired tenure rights would have been exempted from the effect of the modifying statute.[37]

Indirect repeal or modification of a tenure statute applies only to a statute which is a statement of legislative policy and not an intended

grant of contractual rights to the faculty member. Subsequent to acquisition of the tenure rights, a legislature may enact statutes which in some way take away or detract from those rights because the provisions of the new statute are inconsistent with the rights already acquired by the teacher.

Many of the cases involving indirect modification or repeal by subsequent legislation have to do with the retirement and salary provisions of original tenure statutes. In Phelps v. Board of Education[38] the original tenure statute prohibited reduction of tenured teachers' compensation except for inefficiency, incompetency, conduct unbecoming to a teacher, or other just cause, and after formal charge and hearing. Phelps contended that this exempted him from the provisions of a subsequent act under which the local governing board reduced his salary. But the U.S. Supreme Court first agreed with the New Jersey Supreme Court that the statute was not a continuing contract of indefinite duration with the teacher and therefore did not vest him with contractual rights; and then sustained the decision that the legislature had the power to alter the original tenure act and to empower the board of school trustees to fix and determine the salaries of teachers ". . . notwithstanding any such person be under tenure."[39]

The U.S. Supreme Court, in upholding Phelps, also upheld the New Jersey Supreme Court's decision in Askam v. Board of Education.[40] In both cases, the New Jersey statute contested had been enacted by the New Jersey Legislature because of the state's fiscal emergency resulting

from the economic depression of the early 1930's, and was effective for the years 1933-34. (The act was subsequently extended to cover 1935-36.) But after the expiration date of the right given to school boards under this emergency statute to reduce the salaries of administrators and employees of a school district, the local school board could not invoke the right in order to justify salary reductions, and reasons for any reductions in a teacher's salary were required to be as stated in the original teachers' tenure act, i.e., inefficiency, etc.[41]

The U.S. Supreme Court stated that the later act, while not so entitled, was an implied partial amendment or repeal of the original tenure act and, ". . .[t]he status of tenure teachers, while in one sense perhaps contractual, is in essence dependent on a statute, like that of the incumbent of a statutory office, which the legislature well may abolish, or whose emoluments may change. . . We are clear that the legislature could repeal the Act of 1909. If it could repeal it, it can modify it as thought best, and that it did by the act of 1933."[42]

While most court decisions regarding indirect amendment of tenure rights have involved legislative modification of common school statutes, the courts appear to apply principles of law affecting tenure systems and continuing contract systems in general, whether in the common schools or in higher education. A statute affecting the classification of teachers was enacted by the California legislature some years after the 1921 Teachers' Tenure Act; the later act provided that when a permanent employee of a school district reached 65 years of age the permanent classification of that employee ceased and employment proceeded year by

year at the discretion of the governing board. In Taylor v. Board of Education,[43] the appellant claimed that an employee having permanent status at the time of enactment of the later act had attained permanent tenure and that the original tenure act had bestowed contractual rights upon the teacher. The California Court of Appeals said that under well-recognized principles of law, a legislative act will not be construed to bestow contractual rights unless legislative intention clearly creates the contractual relationship. The Court ruled that in the Teachers' Tenure Act the Legislature clearly did not intend to create such a relationship, that all doubt must therefore be resolved in favor of the continuance of the power of the government, and that all employees under the provisions of the Teachers' Tenure Act were hence subordinate to the right of the legislature to repeal or amend any portion of that act at any time.

Whether by direct or indirect amendment, action taken by a state legislature to modify faculty tenure rights depends heavily upon the wording of the pertinent statutes creating the mechanism for award, and statutes vary from state to state. Variations in statutory authorization for tenure award among higher education systems within a state may also limit a legislature's authority to modify tenure rights. Such a possibility is well illustrated by the status of tenure rights in Washington.

## Tenure and the Legislature in Washington State

Historically, Washington State junior college teachers, as employees of school districts, had for many years been under a partial tenure system, the continuing contract law, consisting basically of spring notification of renewal or nonrenewal. In 1967 the community college system was given separate status by the Legislature when it separated grades thirteen and fourteen from the kindergarten through fourteenth grade common school system. Since tenure had been one of the strong traditions of higher education for centuries and had proven its worth as a safeguard of academic freedom, and since many of the junior college teachers in the state already had continuing contract rights, the Legislature enacted a law providing tenure rights for community college faculty.

RCW 28B.50.850, the purpose section of the community college tenure act, neither mentions nor seems to imply that the Legislature intended to bestow contractual rights upon community college faculty members who become tenured. Proceeding on the assumption that tenure rights for community college faculty in this state are not contractual rights statutorily granted, and, since they are granted directly by the Legislature in a statute detailing award of tenure, cause for removal, procedures to be followed in removal, and so forth, it is defensible to conclude that such tenure rights could, according to the decision in McKenna, be modified by subsequent legislation.[44] Furthermore, under McKenna and others, it is possible that the rights of community college faculty currently tenured might be retroactively affected.

The authority for award of tenure rights to faculty in Washington's four-year institutions is substantially different than that of award to community college faculty, suggesting that a legislature attempting to alter the rights of university faculty might find itself more constrained legally than when dealing with community college faculty rights.

The legislature has expressly given the governing board of each four-year institution authority to employ faculty and staff. Implied in that explicit delegation of authority is the authority to set the terms and conditions of employment and to enter into contracts with employees who, except as otherwise provided by law, ". . . hold their positions during the pleasure of said board of regents," in the case of the University of Washington and Washington State University (RCW 28B.20.130 and 28B.30.150); and ". . . hold their positions, until discharged therefrom by the board for good and lawful reason," in the case of the three regional universities and The Evergreen State College (RCW 28B.40.120).

Employment contracts between the governing boards and faculty members either state explicitly that the policies set forth in the faculty handbook, including the tenure policy, are thereby considered to be a part of the employment agreement, or refer to the rules and regulations and policies of the institution being incorporated therein. Each faculty handbook has a section devoted in detail to tenure or an equivalent policy.

Because the award of tenure rights in the four-year institutions originates with the legislature, which again does not seem to have intended to

confer contractual rights on tenured faculty members, the legislature can in all likelihood modify those rights. For instance, new faculty hired at an institution could not earn tenure rights after a legislature enacted into law an explicit statement precluding the governing board from granting tenure to faculty members. But faculty already possessing tenure rights granted to them by a governing board as part of an employment contract could perhaps prove a vested contract right which, under the United States Constitution, could not be retroactively affected by legislative action. Hence, it is possible that tenured faculty at the four-year institutions could retain tenure under normal institutional circumstances for as long as they wished, absent adequate cause for dismissal, in spite of legislative wishes to the contrary.

## Summary and Conclusion

Tenure rights for faculty in higher education have been the principal mechanism by which American society has assured the continued existence and influence of an unfettered source of social and political comment and criticism. At certain times, as in the years immediately following World War II, tenure has proven to be the essential protection of an outspoken teacher against a social element gripped by paranoia or fear.

Recently however, tenure has been under attack as an obstacle to institutional flexibility, both fiscal and programmatic, by forcing institutions to become unwilling harbingers of spent or lackadaisical professors, and as increasingly superfluous with the growth of faculty collective bargaining and judicial affirmation of some constitutional rights of faculty regardless of tenure status.

How a legislature deals with the question of tenure and the contemporary problems confronting it is legally limited in some regards. Washington State has provided for tenure rights for higher education faculty in two ways: community college faculty have received tenure under a detailed statute and four-year faculty have been awarded tenure by the respective institutional governing boards at the bequest of the legislature. It is likely that the effects of major legislative action upon tenure award rights or procedures would differ between the community college system and the four-year institutions, particularly regarding the impact on faculty members already tenured.

1. Annot., 66 A.L.R. 3d 1018, 1021 (1975).

2. A distinction should be made at the outset between a tenure system and a continuing contract system. Tenure is basically the award to a teacher or faculty member, after a probationary period, of continued employment status until such time as the school or institution attempts by means of adequate notice and fair hearing to discontinue that employment status for specified, adequate cause.

   A continuing contract is basically formal notification by a specific date, usually in the spring, of intent by the school or institution that the teacher or faculty member be reemployed the following period of time, usually a year; failure by the employer to notify by the specified date of intention to not rehire results in the employee's continued employment. See Appendix D for Washington State's continuing contract statute for teachers of kindergarten through 12th grade.

3. 66 A.L.R. 3d, supra at 1024.

4. 70 Nev. 144, 261 P. 2d 515 (1953).

5. W. Keast and J. Macy, Faculty Tenure, A Report and Recommendations by the Commission on Academic Tenure in Higher Education at 75 (1973).

6. The question of procedural due process rights of nontenured faculty is an emerging area of law, infra p. 12.

7. K. Alexander and E. Solomon, College and University Law at 356-357 (1972).

8. L. Glenny and T. Dalglish, Public Universities, State Agencies, and the Law: Constitutional Autonomy in Decline at 15 (1973).

9. W. Wooden, State Universities - Legislative Control of a Constitutional Corporation, 55 Mich. L. Rev. 728 (1957).

10. Mich. Const. Art. 8, § 5.

11. Scopes v. State, 154 Tenn. 105, 289 S.W. 363 (1927).

12. Burdick v. Babcock, 31 Iowa 562 (1871).

13. Developments in the Law: Academic Freedom, 81 Harv. L. Rev. 1045, 1051 (1968).

14. See Appendix B.

15. See comment on Indiana ex rel. Anderson v. Brand.

16. See Appendix C.

17. See Eastern Washington University letter of appointment with tenure, Appendix C.

18. See University of Washington notice of appointment, Appendix C.

19. Green v. Howard University, 412 F. 2d 1128 (D.C. Cir. 1969) in R. Brown, Tenure Rights in Contractual and Constitutional Context, 6. J. L. & Educ. 279, 284 (1977).

20. Perry v. Sindermann, 408 U.S. 593, 601-602 (1972).

21. R. Brown, supra at 285.

22. 408 U.S. 593, 33 L.Ed. 2d 570, 92 S. Ct. 2694 (1972).

23. 408 U.S. 564, 33 L.Ed. 2d 548 (1972).

24. R. Brown, supra at 302.

25. 51 Mich. App. 593, 215 N.W. 2d 745 (1974).

26. 215 N.W. 2d at 747.

27. 369 F. Supp. 959, 377 F. Supp. 524 (M.C. Pa. 1974).

28. Legislative Conference of City University of New York v. Board of Higher Education of City of New York, 38 App. Div. 2d 478, 330 N.Y.S. 2d 688 (1972).

29. 329 Pa. 213, 197 A. 344 (1938).

30. 303 U.S. 95, 82 L.Ed. 685, 58 S. Ct. 443 (1938).

31. Annot., 147 A.L.R. 2d 293 (1943).

32. Annot., 147 A.L.R. 2d at 298.

33. 10 N.W. 2d 155 (1943).

34. See infra, p. 17.

35. See infra, p. 18.

36. See Bragg v. Swarthmore School District, 337 Pa. 363, 11 A. 2d 152 (1940).

37. See Chambers v. Davis, 131 Cal. App. 500, 22 P. 2d 27 (1933).

38. 115 N.J.L. 310 (1935), 180 A. 220, 116 N.J.L. 412, 185 A. 8, 300 U.S. 319, 81 L.Ed. 674, 57 S. Ct. 483 (1937).

39. Id. at 321.

40. 116 N.J.L. 416 (1936), 184 A. 737, 300 U.S. 319, 81 L.Ed. 674, 57 S. Ct. 483 (1937).

41. Steck v. Board of Education, 123 N.J.L. 158, 8 A. 2d 120 (1939).

42. Askam, supra.

43. 31 Cal. App. 2d 734, 89 P. 2d 148 (1939).

44. See infra, p. 19.

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# APPENDICES

## APPENDIX A:

Excerpts from the
U.S. and Washington State Constitutions

Article I, Section 10. Restrictions Upon Powers of States.

"No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money, emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility. . ."

First Amendment to U.S. Constitution. Freedom of Religion, of Speech, and of the Press.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peacably to assemble, and to petition the government for a redress of grievances."

Fourteenth Amendment to U.S. Constitution, Section 1. Citizenship Rights Not to Be Abridged by States.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article IX, Education.

Section 1. Preamble. "It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex."

Article IX, Education.

Section 2. Public School System. "The legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established. But the entire revenue derived from the common school fund and the state tax for common schools shall be exclusively applied to the support of the common schools."

Article XIII, State Institutions.

Section 1. Educational, Reformatory and Penal Institutions. "Educational, reformatory and penal institutions; those for the benefit of blind, deaf, dumb, or otherwise defective youth; for the insane or idiotic; and such other institutions as the public good may require, shall be fostered and supported by the state, subject to such regulations as may be provided by law. The regents, trustees, or commissioners of all such institutions existing at the time of the adoption of this Constitution, and of such as shall thereafter be established by law, shall be appointed by the governor, by and with the advice and consent of the senate; and upon all nominations made by the governor, the question shall be taken by ayes and noes, and entered upon the journal."

## APPENDIX B:

Community College Statute

**28B.50.850 Faculty tenure——Purpose.** It shall be the purpose of RCW 28B.50.850 through 28B.50.869 to establish a system of faculty tenure which protects the concepts of faculty employment rights and faculty involvement in the protection of those rights in the state system of community colleges. RCW 28B.50.850 through 28B.50.869 shall define a reasonable and orderly process for appointment of faculty members to tenure status and the dismissal of the tenured faculty member. [1969 ex.s. c 283 § 32. Formerly RCW 28.85.850.]

**Severability——1969 ex.s. c 283:** See note following RCW 28A.02.061.

**28B.50.851 Faculty tenure——Definitions.** As used in RCW 28B.50.850 through 28B.50.869:

(1) "Tenure" shall mean a faculty appointment for an indefinite period of time which may be revoked only for adequate cause and by due process;

(2) (a) "Faculty appointment", except as otherwise provided in subsection (2)(b) below, shall mean full time employment as a teacher, counselor, librarian or other position for which the training, experience and responsibilities are comparable as determined by the appointing authority, except administrative appointments; "faculty appointment" shall also mean department heads, division heads and administrators to the extent that such department heads, division heads or administrators have had or do have status as a teacher, counselor, or librarian;

(b) "Faculty appointment" shall not mean special faculty appointment as a teacher, counselor, librarian, or other position as enumerated in subsection (2)(a) of this section, when such employment results from special funds provided to a community college district from federal moneys or other special funds which other funds are designated as "special funds" by the state board for community college education: *Provided*, That such "special funds" so designated by the state board for purposes of this section shall apply only to teachers, counselors and librarians hired from grants and service agreements and teachers, counselors and librarians hired in nonformula positions. A special faculty appointment resulting from such special financing may be terminated upon a reduction or elimination of funding or a reduction or elimination of program: *Provided further*, That a "faculty appointee" holding a faculty appointment pursuant to subsections (1) or (2)(a) who has been subsequently transferred to a position financed from "special funds" pursuant to subsection (2)(b) and who thereafter loses his position upon reduction or elimination of such "special funding" shall be entitled to be returned to his previous status as a faculty appointee pursuant to subsection (1) or (2)(a) depending upon his status prior to the "special funding" transfer. Notwithstanding the fact that tenure shall not be granted to anyone holding a special faculty appointment, the termination of any such faculty appointment prior to the expiration of the term of such faculty member's individual contract for any cause which is not related to elimination or reduction of financing or the elimination or reduction of program shall be considered a termination for cause subject to the provisions of this chapter;

(3) "Probationary faculty appointment" shall mean a faculty appointment for a designated period of time which may be terminated without cause upon expiration of the probationer's terms of employment;

(4) "Probationer" shall mean an individual holding a probationary faculty appointment;

(5) "Administrative appointment" shall mean employment in a specific administrative position as determined by the appointing authority;

(6) "Appointing authority" shall mean the board of trustees of a community college district;

(7) "Review committee" shall mean a committee composed of the probationer's faculty peers, a student representative, and the administrative staff of the community college: *Provided*, That the majority of the committee shall consist of the probationer's faculty peers. [1975 1st ex.s. c 112 § 1; 1974 ex.s. c 33 § 1; 1970 ex.s. c 5 § 3; 1969 ex.s. c 283 § 33. Formerly RCW 28.85.851.]

**Severability——1969 ex.s. c 283:** See note following RCW 28A.02.061.

**28B.50.852 Faculty tenure——Rules and regulations——Award of faculty tenure——Maximum probationary period.** The appointing authority shall promulgate rules and regulations implementing RCW 28B.50.850 through 28B.50.869 and shall provide for the award of faculty tenure following a probationary period not to exceed three consecutive regular college years, excluding summer quarter: *Provided*, That tenure may be awarded at any time as may be determined by the appointing authority after it has given reasonable consideration to the recommendations of the review committee. [1969 ex.s. c 283 § 34. Formerly RCW 28.85.852.]

**Severability——1969 ex.s. c 283:** See note following RCW 28A.02.061.

**28B.50.855 Faculty tenure——Written agreement embodying terms of employment furnished faculty.** The appointing authority shall provide each faculty member, immediately upon employment, with a written agreement which delineates the terms of employment including all conditions and responsibilities attached thereto. [1969 ex.s. c 283 § 35. Formerly RCW 28.85.855.]

**Severability——1969 ex.s. c 283:** See note following RCW 28A.02.061.

**28B.50.856 Faculty tenure——Evaluation of probationer by review committee——Progress report, acknowledgment of receipt——Recommendation as to tenure.** The probationary faculty appointment period shall be one of continuing evaluation of a probationer by a review committee. The evaluation process shall place primary importance upon the probationer's effectiveness in his appointment. The review committee shall periodically advise each probationer, in writing, of his progress during the probationary period and receive the probationer's written acknowledgment thereof. The review committee shall at appropriate times make recommendations to the appointing authority as to whether tenure should or should not be granted to individual probationers: *Provided*, That the final decision to award or withhold tenure shall rest with the appointing authority, after it has given reasonable consideration to the recommendations of the review committee. [1969 ex.s. c 283 § 36. Formerly RCW 28.85.856.]

**Severability——1969 ex.s. c 283:** See note following RCW 28A.02.061.

**28B.50.857 Faculty tenure——Decision not to renew probationary appointment, notice by appointing authority, when.** Upon the decision not to renew a probationary faculty appointment, the appointing authority shall notify the probationer of such decision as soon as possible during the regular college year: *Provided*, That such notice may not be given subsequent to the last day of the winter quarter. [1969 ex.s. c 283 § 37. Formerly RCW 28.85.857.]

**Severability——1969 ex.s. c 283:** See note following RCW 28A.02.061.

**28B.50.860 Faculty tenure——Tenure retained upon administrative appointment——Exception.** A tenured faculty member, upon appointment to an administrative appointment, except that of president, shall be allowed to retain his tenure. [1969 ex.s. c 283 § 38. Formerly RCW 28.85.860.]

**Severability——1969 ex.s. c 283:** See note following RCW 28A.02.061.

**28B.50.861 Faculty tenure——Dismissal only for sufficient cause.** The tenured faculty member shall not be dismissed except for sufficient cause, nor shall a faculty member who holds a probationary faculty appointment be dismissed prior to the written terms of the appointment except for sufficient cause. [1969 ex.s. c 283 § 39. Formerly RCW 28.85.861.]

**Severability——1969 ex.s. c 283:** See note following RCW 28A.02.061.

**28B.50.862 Faculty tenure——Certain grounds constituting sufficient cause.** Sufficient cause shall also include aiding and abetting or participating in: (1) Any unlawful act of violence; (2) Any unlawful act resulting in destruction of community college property; or (3) Any unlawful interference with the orderly conduct of the educational process. [1969 ex.s. c 283 § 40. Formerly RCW 28.85.862.]

**Severability——1969 ex.s. c 283:** See note following RCW 28A.02.061.

**28B.50.863 Faculty tenure——Review prior to dismissal——Scope——Recommendations of review committee.** Prior to the dismissal of a tenured faculty member, or a faculty member holding an unexpired probationary faculty appointment, the case shall first be reviewed by a review committee. The review shall include testimony from all interested parties including, but not limited to, other faculty members and students. The faculty member whose case is being reviewed shall be afforded the right of cross-examination and the opportunity to defend himself. The review committee shall prepare recommendations on the action they propose be taken and submit such recommendations to the

appointing authority prior to their final action. [1969 ex.s. c 283 § 41. Formerly RCW 28.85.863.]

**Severability——1969 ex.s. c 283:** See note following RCW 28A.02.061.

**28B.50.864 Faculty tenure——Appeal from decision for dismissal——Procedure.** Any faculty member dismissed pursuant to RCW 28B.50.850 through 28B.50-.869 shall have a right to appeal the final decision of the appointing authority in accordance with RCW 28B.19-.150 as now or hereafter amended. [1973 c 62 § 24; 1969 ex.s. c 283 § 42. Formerly RCW 28.85.864.]

**Savings——Severability——1973 c 62:** See notes following RCW 28B.10.200.

**Severability——1969 ex.s. c 283:** See note following RCW 28A.02.061.

**28B.50.867 Faculty tenure——Tenure rights upon transfer of employment to another community college.** Upon transfer of employment from one community college to another community college within a district, a tenured faculty member shall have the right to retain tenure and the rights accruing thereto which he had in his previous employment: *Provided*, That upon permanent transfer of employment to another community college district a tenured faculty member shall not have the right to retain his tenure or any of the rights accruing thereto. [1969 ex.s. c 283 § 43. Formerly RCW 28.85.867.]

**Severability——1969 ex.s. c 283:** See note following RCW 28A.02.061.

**28B.50.868 Faculty tenure——Faculty members currently employed granted tenure.** All employees of a community college district, except presidents, who were employed in the community college district at the effective date of chapter 283, Laws of 1969 ex. sess. and who held or have held a faculty appointment with the community college district or its predecessor school district shall be granted tenure by their appointing authority notwithstanding any other provision of RCW 28B.50-.850 through 28B.50.869. [1970 ex.s. c 5 § 4; 1969 ex.s. c 283 § 44. Formerly RCW 28.85.868.]

**Reviser's note:** The various provisions of chapter 283, Laws of 1969 ex. sess. became effective on several different dates. The effective date of the provisions thereof relating to tenure appears to have been midnight August 10, 1969, see preface, Laws of 1969 ex. sess., and see also 1969 ex.s. c 283 §§ 54 and 55 (uncodified).

**Severability——1969 ex.s. c 283:** See note following RCW 28A.02.061.

**28B.50.869 Faculty tenure——Review committees, composition——Selection of teaching faculty representatives, student representative.** The review committees required by RCW 28B.50.850 through 28B.50.869 shall be composed of members of the administrative staff, a student representative, and the teaching faculty. The representatives of the teaching faculty shall represent a majority of the members on each review committee. The members representing the teaching faculty on each review committee shall be selected by a majority of the teaching faculty and faculty department heads acting in a body. The student representative, who shall be a full time student, shall be chosen by the student association of the particular community college in such manner as the members thereof shall determine. [1974 ex.s. c 33 § 2; 1969 ex.s. c 283 § 45. Formerly RCW 28.85.869.]

**Severability——1969 ex.s. c 283:** See note following RCW 28A.02.061.

## APPENDIX C:

Four-year Institution Authority

C-1: Statutes

**28B.20.130 Powers and duties of regents——General.** General powers and duties of the board of regents are as follows:

(1) To have full control of the university and its property of various kinds.

(2) To employ the president of the university, his assistants, members of the faculty, and employees of the institution, who except as otherwise provided by law, shall hold their positions during the pleasure of said board of regents.

(3) Establish entrance requirements for students seeking admission to the university. Completion of examinations satisfactory to the university may be a prerequisite for entrance by any applicant at the university's discretion. Evidence of completion of public high schools and other educational institutions whose courses of study meet the approval of the university may be acceptable for entrance.

(4) Establish such colleges, schools or departments necessary to carry out the purpose of the university and not otherwise proscribed by law.

(5) With the assistance of the faculty of the university, prescribe the course of study in the various colleges, schools and departments of the institution and publish the necessary catalogues thereof.

(6) Grant to students such certificates or degrees as recommended for such students by the faculty. The board, upon recommendation of the faculty, may also confer honorary degrees upon persons other than graduates of this university in recognition of their learning or devotion to literature, art or science: *Provided*, That no degree shall ever be conferred in consideration of the payment of money or the giving of property of whatsoever kind.

(7) Accept such gifts, grants, conveyances, bequests and devises, whether real or personal property, or both, in trust or otherwise, for the use or benefit of the university, its colleges, schools, departments, or agencies; and sell, lease or exchange, invest or expend the same or the proceeds, rents, profits and income thereof except as limited by the terms of said gifts, grants, conveyances, bequests and devises. The board shall adopt proper rules to govern and protect the receipt and expenditure of the proceeds of all fees, and the proceeds, rents, profits and income of all gifts, grants, conveyances, bequests and devises above-mentioned, and shall make full report of the same in the customary biennial report to the governor and members of the legislature, or more frequently if required by law: *Provided, however*, That nothing herein contained shall be construed to repeal, amend or in any way modify any of the provisions of RCW 28B.20.380.



(8) Except as otherwise provided by law, to enter into such contracts as the regents deem essential to university purposes.

(9) To transmit prior to the first day of January, preceding each regular session of the legislature, to the governor and members of the legislature, a printed report giving information of the receipt and expenditure of money subsequent to the last such report, furnishing an estimate of the needs of the institution, and giving such additional information as will be helpful to the state authorities in providing for the institution. [1969 ex.s. c 223 § 28B.20.130. Prior: 1939 c 176 § 1, part; 1927 c 227 § 1, part; 1909 c 97 p 240 § 5, part; RRS § 4557, part; prior: 1895 c 101 § 2, part; 1893 c 122 § 10, part; 1890 pp 396, 397, 398 §§ 7, 9, 11. Formerly RCW 28.77.130, 28.77.140.]

**28B.30.150 Regents——General powers and duties.** The regents of Washington State University, in addition to other duties prescribed by law, shall:

(1) Have full control of the university and its property of various kinds.

(2) Employ the president of the university, his assistants, members of the faculty, and employees of the university, who, except as otherwise provided by law, shall hold their positions during the pleasure of said board of regents.

(3) Establish entrance requirements for students seeking admission to the university. Completion of examinations satisfactory to the university may be a prerequisite for entrance by any applicant, at the university's discretion. Evidence of completion of public high schools and other educational institutions whose courses of study meet the approval of the university may be acceptable for entrance.

(4) Establish such colleges, schools or departments necessary to carry out the purpose of the university and not otherwise proscribed by law.

(5) With the assistance of the faculty of the university, prescribe the courses of instruction in the various colleges, schools and departments of the institution and publish the necessary catalogues thereof.

(6) Collect such information as the board deems desirable as to the schemes of technical instruction adopted in other parts of the United States and foreign countries.

(7) Provide for holding agricultural institutes including farm marketing forums.

(8) Provide that instruction given in the university, as far as practicable, be conveyed by means of laboratory work and provide in connection with the university one or more physical, chemical, and biological laboratories, and suitably furnish and equip the same.

(9) Provide training in military tactics for those students electing to participate therein.

(10) Establish a department of elementary science and in connection therewith provide instruction in elementary mathematics, including elementary trigonometry, elementary mechanics, elementary and mechanical drawing and land surveying.

(11) Establish a department of agriculture and in connection therewith provide instruction in physics with special application of its principles to agriculture, chemistry with special application of its principles to agriculture, morphology and physiology of plants with special reference to common grown crops and fungus enemies, morphology and physiology of the lower forms of animal life, with special reference to insect pests, morphology and physiology of the higher forms of animal life and in particular of the horse, cow, sheep and swine, agriculture with special reference to the breeding and feeding of livestock and the best mode of cultivation of farm produce, and mining and metallurgy, appointing demonstrators in each of these subjects to superintend the equipment of a laboratory and to give practical instruction therein.

(12) Establish agricultural experiment stations in connection with the department of agriculture, including at least one in the western portion of the state, and appoint the officers and prescribe regulations for their management.

(13) Grant to students such certificates or degrees, as recommended for such students by the faculty.

WASHINGTON STATE UNIVERSITY

**28B.40.120 Trustees—General powers and duties of board.** In addition to any other powers and duties prescribed by law, each board of trustees of the respective state colleges:

(1) Shall have full control of the state college and its property of various kinds.

(2) Shall employ the president of the state college, his assistants, members of the faculty, and other employees of the institution, who, except as otherwise provided by law, shall hold their positions, until discharged therefrom by the board for good and lawful reason.

(3) With the assistance of the faculty of the state college, shall prescribe the course of study in the various schools and departments thereof and publish such catalogues thereof as the board deems necessary: *Provided*, That the state board of education shall determine the requisites for and give program approval of all courses leading to teacher certification by such board.

(4) Establish such divisions, schools or departments necessary to carry out the purposes of the college and not otherwise proscribed by law.

(5) Except as otherwise provided by law, may establish and erect such new facilities as determined by the board to be necessary for the college.

(6) May acquire real and other property as provided in RCW 28B.10.020, as now or hereafter amended.

(7) Except as otherwise provided by law, may purchase all supplies and purchase or lease equipment and other personal property needed for the operation or maintenance of the college.

(8) May establish, lease, operate, equip and maintain self-supporting facilities in the manner provided in RCW 28B.10.300 through 28B.10.330, as now or hereafter amended.

(9) Except as otherwise provided by law, to enter into such contracts as the trustees deem essential to college purposes.

(10) May receive such gifts, grants, conveyances, devises and bequests of real or personal property from whatsoever source, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the college programs; sell, lease or exchange, invest or expend the same or the proceeds, rents, profits and income thereof except as limited by the terms and conditions thereof; and adopt regulations to govern the receipt and expenditure of the proceeds, rents, profits and income thereof.

(11) May promulgate such rules and regulations, and perform all other acts not forbidden by law, as the board of trustees may in its discretion deem necessary or appropriate to the administration of the college. [1969 ex.s. c 223 § 28B.40.120. Prior: 1909 c 97 p 252 § 4; RRS § 4607; prior: 1905 c 85 § 1; 1897 c 118 § 215; 1893 c 107 § 4. Formerly RCW 28.81.050.]

CENTRAL WASHINGTON UNIVERSITY
EASTERN WASHINGTON UNIVERSITY
THE EVERGREEN STATE COLLEGE
WESTERN WASHINGTON UNIVERSITY

C-2: Employment Contract Samples

EASTERN WASHINGTON UNIVERSITY

LETTER OF APPOINTMENT WITH TENURE

TO: _____, hereinafter referred to as the "Appointee".

The Board of Trustees of Eastern Washington University, hereinafter referred to as the "University", notifies you of your appointment with tenure for the (academic) (administrative) year from _____, 19___, to _____, 19___, with the (rank) (title) of _____.

Your salary for this period of service is $_____, payable in _____ installments.

The terms, conditions and provisions of this current Letter of Appointment are governed by the provisions of the University By-Laws in effect at the date of acceptance of this appointment, which By-Laws are incorporated by reference herein. The University reserves the right to amend its By-Laws at future times, which amended By-Laws shall be deemed to affect all subsequent continuing appointments of the Appointee.

The Appointee acknowledges the conditions of this Letter of Appointment and accepts the same by appropriate execution and transmittal of the original Letter of Appointment to the Provost for Academic Affairs on or before _____.

| | |
|---|---|
| _____ Date | _____ Provost for Academic Affairs |
| _____ Date | _____ President, Eastern Washington University |
| _____ Date | _____ Chairman, Board of Trustees |
| _____ Date | _____ Appointee |

UNIVERSITY OF WASHINGTON
OFFICE OF THE PRESIDENT
SEATTLE, WASHINGTON 98195

UW–1023B, Rev. 4/74

# NOTICE OF APPOINTMENT

**Name:**

**Address:**

On the above date the Board of Regents approved your appointment to the academic staff as follows:

**Title:**

**Effective:**

Your salary for the above appointment will be:

Salaries for service rendered during the month are paid by check at the end of the month. For payroll purposes, regardless of the exact academic period covered by any given quarter, appointments are governed by the following dates:

Academic year on a nine-month basis—September 16 through June 15
Academic year on a ten-month basis—September 1 through June 30
Academic year on a twelve-month basis—July 1 through June 30

Autumn Quarter—September 16 through December 15
Winter Quarter—December 16 through March 15
Spring Quarter—March 16 through June 15
Summer Quarter—June 16 through August 15

Faculty members are expected to acquaint themselves with the *University of Washington Handbook*, particularly the section of the Faculty Code in which the regulations about tenure are described. Tenure is not acquired with appointments on research contracts or special funds. Such appointments are subject to availability of funds and need for continuance of the position.

This appointment is subject to sufficiency of funds and to the requirements of the applicable laws of the State of Washington.

John R. Hogness
*President*

TENTATIVE OFFER OF TEMPORARY EMPLOYMENT

# WESTERN WASHINGTON STATE COLLEGE

BELLINGHAM, WASHINGTON 98225 · (206) 676-3000

Subject to the contingencies and conditions indicated below, I am authorized to offer you a tentative appointment as

Your salary will be based on Step of the faculty salary schedule and will be for the period beginning and ending

This offer is contingent upon formal approval of your appointment by the Board of Trustees of Western Washington State College. If approved by the Board of Trustees, your appointment will be subject to all applicable laws of the State of Washington and to all rules, regulations and policies which have been, or which may hereafter be, adopted or amended by the Board of Trustees of Western Washington State College.

Your appointment as a faculty member will, if approved, be temporary. You should have no expectation of continued re-employment after the expiration of the indicated appointment. It is presently anticipated that your major responsibilities will include a teaching load which will consist of the following:

These specific course assignments are, however, subject to modification by the Department where appropriate.

The faculty and I are pleased with the possibility that you might choose to join us. Please sign below if you would accept the appointment as indicated and return at your earliest convenience.

Yours sincerely,

RECOMMENDED BY:

_____
Vice President/Provost

_____
Department Chairperson

ACCEPTED BY:

_____
Dean

_____
Prospective Faculty Member

C-3: Faculty Handbook Excerpts

# Chapter 25

# TENURE OF THE FACULTY

### Section 25-01. Statute Relating to Tenure

[For a statute relating to tenure, see Volume I, "Statutes," RCW 28B.20.130(1)(2).]

### Section 25-11. Statement of Policy by the Board of Regents

The University of Washington Regents accept in principle the concept that tenure for members of the faculty is essential for effective teaching and sustained productivity in scholarship.

They furthermore accept in principle the concept that the privilege of a faculty member to hold his position without discriminatory reduction in salary, and not to be removed therefrom, should not be abrogated except for cause and through orderly administrative processes, maintaining and retaining, however, the responsibilities and obligations of the Board of Regents as defined in the laws of the state of Washington.

*BR, October 1954; rev. May 1956*

### Section 25-31. Definition of Tenure

Tenure is the right of a faculty member to hold his position without discriminatory reduction of salary, and not to suffer loss of such position, or discriminatory reduction of salary, except for the reasons and in the manner provided in this Chapter.

### Section 25-32. Criteria for Tenure

A. Unless he is disqualified under any other provision of this section, a full-time member of the faculty has tenure if:

1. he is a professor or associate professor; or

2. he has held full-time rank as instructor or assistant professor in the University for a combined accumulation of seven or more consecutive years and has not received the prescribed notice terminating his appointment.

B. Unless disqualified under any other provisions of this section, in unusual cases an assistant professor may be recommended for tenure under Section 25-41 at any time after completion of three years of full-time service at that rank at the University of Washington.

C. A faculty member does not acquire tenure:

1. under an acting appointment, or

2. under a visiting appointment, or

3. under any appointment as lecturer, or

4. under any initial appointment specified to be without tenure, or

5. under an adjunct appointment, or

6. under a research appointment, or

7. under a clinical appointment, or

8. under an affiliate appointment, or

9. under any other appointment for which the University does not provide the salary from its regularly appropriated funds, unless the President notifies the appointee in writing that tenure may be acquired under such appointment. Each appointment governed by this provision shall contain notice whether tenure may or may not be acquired.

D. Appointments to the rank of associate professor or full professor "without tenure," as specified under C4 above, are limited to not more than three years.

E. A faculty member with tenure who assumes a part-time status has tenure in that status if the President notifies him in writing that tenure shall accompany his part-time appointment.

F. Under paragraph A of this section a part-time faculty member accumulates eligibility for tenure if the requirement of full-time service is specifically waived in writing by the President, but an acting faculty member does not accumulate eligibility for tenure.

G. Time spent on leaves of absence from the University does not count in the accumulation of time toward tenure, but the count of consecutive years of service shall continue after the leave of absence from the point reached at the time the leave commenced.

*Section 13-31, April 16, 1956; S-A 22, April 18, 1958; S-A 25, October 29, 1959; S-A 26, December 19, 1960; S-A 32, May 8, 1967; S-A 37, February 8, 1971; S-A 41, April 3, 1972; all with Presidential approval*

### Section 25-33. Tenure of Faculty Members in Administrative Positions

The tenure of a faculty member who holds an administrative position, such as that of dean or department chairman, extends only to the faculty position which he holds conjointly with such administrative position.

*Section 13-31, with Presidential approval April 16, 1956*

### Section 25-41. Granting of Tenure: Policy and Procedure

[For "Documentation for Recommendations for Promotions or Tenure," see Section 24-54, footnote.]

A. Tenure should be granted to faculty members of such character and scholarly ability that the University, so far as its resources permit, can justifiably undertake to employ them for the rest of their academic careers. Such a policy requires that the granting of tenure be considered carefully. It should be a specific act, even more significant than promotion in academic rank, which is exercised only after careful consideration of the candidate's scholarly qualifications and character.

B. Not later than the end of the academic year prior to that in which an assistant professor would acquire tenure under the provisions of Section 25-32, a decision shall be made in the following manner. A recommendation that the assistant professor be granted or denied tenure shall be sent to the dean of his school or college. This recommendation shall be based upon a majority vote of the professors and associate professors of his department, or of his school or college if it is not departmentalized. If the chairman does not concur in the recommendation he may also submit his own recommendation. The dean, advised as prescribed in Section 24-54C, shall then make his recommendation to the President, and if tenure is to be granted it shall be conferred by the President acting for the Board of Regents. If the assistant professor's tenure is granted, the President shall so notify him in writing. If his tenure is denied, his dean shall cause him to be notified in writing that his appointment will terminate at the end of the succeeding academic year. If a tenure decision is postponed for reconsideration, the assistant professor's dean shall cause him to be notified in writing that his appointment will terminate at the end of the second succeeding academic year unless reconsideration in the meantime shall have resulted in the granting of tenure.

*Section 13-31, with Presidential approval April 16, 1956*

**Section 25-51. Grounds for Removal of Persons with Tenure for Cause**

Faculty members having tenure under the provisions of this Chapter may be removed from their positions or subjected to discriminatory reduction of salary for one or more of the following reasons:

1. Incompetence
2. Neglect of duty
3. Physical or mental incapacity to perform academic duties
4. Dishonesty or immorality
5. Conviction of a felony

Such a removal is termed a "removal for cause."

*Section 13-31, April 16, 1956, S-A 41, April 3, 1972, both with Presidential approval*

**Section 25-52. Removal of Faculty for Budgetary Reasons or for Educational Policy**

A. Anything to the contrary in Section 25-53 notwithstand, termination of the appointment of faculty members having tenure under the provisions of this Chapter, or of non-tenured faculty members prior to the end of the specified term, may be effected by the University upon reorganization within the University for budgetary reasons or for educational policy, or both, provided:

1. That the reorganization, in its relation to principles of tenure, is reasonable; and

2. That the procedures specified in 25-52 C are followed in effecting termination.

B. The following factors shall be considered in determining the reasonableness of a reorganization:

1. The nature of the budgetary problem;

2. The need for an educational reorganization;

3. The impact of the reorganization on students, faculty, the department, the college, the University, and related activities outside the University.

Each school or college must follow procedures for determining the reasonableness of a reorganization as provided by Section 25-55. Such procedures must include establishment of effective means to gather the impact data necessary to make the determination that the reorganization is reasonable.

C. Notification and Placement The faculty who are members of a program element proposed for termination must be notified of the proposed action immediately. The faculty member must also be notified in writing when the decision to eliminate his/her position in the program element becomes final, and the appointment may not be terminated prior to the end of the academic year following the one in which the decision to eliminate that position becomes final. Every reasonable possibility of placing the affected faculty member in other University employment with comparable terms of employment must be exhausted. A special assignment with pay may be granted for up to one year to enable the affected faculty member to prepare for changed academic responsibilities.

D. Replacement of a Released Faculty Member. In the event that the program element which has been terminated should be reinstituted within a period of five years, new positions shall not be filled unless the released faculty member has been offered reappointment for a term comparable to the one previously held. The released faculty member must be given a reasonable time within which to accept or decline reappointment.

E. A termination of appointment pursuant to this section is designated a "removal for reorganization." In proceedings to effect a removal for reorganization, the rules of procedures prescribed in Section 25-62 shall be followed, with adjustments being made where necessary. The Tenure Committee shall determine, after the Appeal Committee has reviewed the termination of the program element (see Section 25-55 B), whether the decision to remove the faculty member was reasonable and whether the procedures specified for termination have been followed.

**Section 25-53. Necessity for Hearings in Tenure Proceedings**

No faculty member having tenure as defined in this Chapter shall be removed from his position or subjected to discriminatory reduction of salary until he has been given opportunity for a hearing as prescribed by Section 25-62.

*Section 13-31, with Presidential approval April 16, 1956*

**Section 25-54. Removal of Faculty by Reason of Financial Emergency**

Should the President form a judgment that a budgetary problem is severe enough to lead to a general reduction in force and the procedures prescribed in 25-52 will be inadequate to meet that problem, i.e., that a financial emergency exists, he shall cause the Financial Emergency Committee to be called into session for the purpose of informing them of the nature of the emergency and seeking their concurrence. If the Financial Emergency Committee concurs by a majority vote with the President that a financial emergency exists, the President shall forward the joint recommendation to the Board of Regents that a financial emergency be declared. If the Committee does not concur with the President that a financial emergency exists, the President shall forward his and the separate Committee recommendations to the Board of Regents.

After the declaration of emergency, the Financial Emergency Committee will advise the Administration on the implementation of the Guidelines dealing with the emergencies described in Executive Order No. 49.

The Financial Emergency Committee shall consist of the combined voting membership of the Senate Executive Committee and the group designated by the Senate as budgetary advisers to the Provost. It shall be chaired by the Chairperson of the Senate.

*S-A 51, June 15, 1976, with Presidential approval*

**Section 25-55. Procedures for Termination of a Program Element**

A. If a reorganization may lead to the termination of the appointment of faculty members having tenure or of non-tenured faculty members prior to the end of a specified term, then, upon identification, by the dean, of a program element proposed for termination, the following procedures shall be observed:

1. The dean shall ask the college council or other elected faculty committee to appoint an advisory committee composed of faculty and students to review the program element. This review shall include an impact statement containing consideration of the reasons for the educational reorganization and an assessment of the impact on students, faculty and staff, the University as a whole and related activities outside the University.

2. Each faculty member within the program element being reviewed shall be notified of the proposed action immediately and shall be given an early opportunity to present his or her views to the Review Committee and to the dean.

3. The Review Committee shall keep a complete record of its proceedings and any data or statements presented to it. A summary of this review shall be presented to faculty and students and their views will be solicited at an open meeting.

4. The dean shall decide whether or not to terminate a program element within a reasonable time after presentation of the evidence by the Review Committee and the results of the open hearing.

B. Appeal Procedures. Within 30 days of the dean's decision to terminate a program element, the faculty members or students affected by a reorganization may appeal the decision to terminate the program element to an Appeal Committee appointed by the Executive Committee of the Senate. The committee will review both the merits and procedures involved in the termination of a program element and will make a recommendation to the President within 30 days of the filing of the appeal.

*S-A 49, December 4, 1975; with Presidential approval*

**Section 25-61. The Tenure Committee**

A. There shall be a Tenure Committee as a special committee of the faculty appointed by the Senate upon recommendation of the Executive Committee, with provision for additional nominations from the floor at the appropriate meeting of the Senate.

B. The functions of the Tenure Committee shall be to conduct hearings, make findings, and state its conclusions to the parties concerned whenever dismissal, including denial of tenure, or discriminatory reduction in salary of a tenured or non-tenured faculty member is at issue, as set forth in Section 25-64. These functions shall include acting on such complaints as may allege discrimination because of race, religion, color, sex, national origin*, age, or handicap. The Committee serves to protect the rights of both the individual concerned and the University. In a larger sense it fulfills an important role in protecting the academic profession from infringement of the prerogatives necessary for its proper functioning; and by the same token it protects these rights and the status of the academic profession in our society by assuring that the prerogatives are not demeaned through misuse as a shelter for incompetence or neglect of duty.

C. The Tenure Committee shall be composed of five members and four alternates who shall be tenured members of the faculty. No one who is eligible to serve as a charging authority may serve on the committee. Not more than one member of any department shall serve as a regular member or an alternate on the Committee at the same time.

D. Terms of regular Committee members shall be two years. No regular Committee member shall serve more than three consecutive two-year terms. Terms of regular Committee members shall be staggered, with three regular members being appointed in even-numbered years and two regular members being appointed in odd-numbered years.

E. Alternate Committee members shall serve two-year staggered terms. An alternate Committee member shall be selected by lot to sit with the Committee with respect to each matter which shall come before it for consideration. In the event one regular Committee member is absent or otherwise unable to serve at any time during the Committee's deliberations with respect to such matter, the alternate Committee member sitting with the Committee shall serve in his place as a full voting member with respect to such matter for so long as that matter shall be before the Committee. No alternate member shall be selected to sit with the Committee a second time until all other alternates shall have been selected once.

F. The presence of five members, including an alternate Committee member entitled to vote with respect to a matter under the foregoing provisions of this section, shall be necessary for a quorum for conducting a hearing; three shall constitute a quorum for all other business of the Committee.

G. In the event of a tenure hearing, the Tenure Committee may invite a member of the faculty of the School of Law to act as counsel or, after consultation with the President, request the Attorney General to appoint special counsel to the Committee.

*Section 13-31, April 16, 1956; S-A 29, June 8, 1964; S-A 34, January 30, 1968; S-A 39, June 8, 1971; S-A 43, June 13, 1972; S-A 55, May 25, 1977: all with Presidential approval*

**Section 25-62. Tenure Hearing Procedures**

It is understood that a faculty member with tenure is deemed qualified to serve the University of Washington throughout his academic career unless the record affirmatively demonstrates his lack of qualifications. The procedural aspects of tenure and dismissal are of exceptional importance in the operation of the tenure system and the maintenance of academic freedom. In the event that a tenured faculty member is to be dismissed involuntarily or is to be subjected to a discriminatory reduction in salary, he shall have an opportunity to submit his case and the charges against him to a full review conducted by the following procedures:

A. Preliminary Proceedings:

1. When a question arises concerning the termination of the services of a faculty member who has tenure, first the appropriate dean ordinarily shall discuss the matter with the faculty member in personal conference. The matter may be concluded by mutual consent at this point.

2. If the matter is not concluded, at the request of the dean or the faculty member, an Advisory Committee may be called into operation to offer its confidential advice to the parties. The Advisory Committee shall consist of three members of the Faculty Council on Faculty Affairs appointed by the Chairman of the Council at the beginning of each academic year. The Advisory Committee shall consult privately with the dean, the faculty member, and others and shall proceed informally to effect a mutually acceptable adjustment if possible.

3. If at any time during the preliminary proceedings the faculty member requests that the formal proceedings be held, these shall be initiated within one month or the matter shall be dropped.

* The Attorney General's Division advises that "national origin" is interpreted to include nationality and citizenship.

B. Statement of Charges:

1. A formal dismissal proceeding shall be commenced by a written communication from the appropriate dean or comparable administrative officer functioning as charging authority to the faculty member and to the Chairman of the Tenure Committee containing:

(a) a statement giving the grounds for dismissal with sufficient particularity of the underlying facts to inform the faculty member of the nature of the charges against him;

(b) a statement that if the faculty member makes a request within thirty days of receipt of the charging authority's statement, he is entitled to a hearing before the Tenure Committee;

(c) a copy of the Faculty Code including Tenure Hearing Procedures;

(d) a first list of witnesses.

C. Time and Place of Hearing: Faculty Member's Answer:

1. If within thirty days of his receipt of the statement of charges the faculty member requests a hearing, the Chairman of the Tenure Committee, after consulting the charging authority and the faculty member, shall set the time and place of the hearing and notify the parties thereof, such time being set to afford the faculty member sufficient time to prepare his defense.

2. Not less than two weeks before the date set for the hearing, the faculty member shall submit to the charging authority and to the Chairman of the Tenure Committee his written answer to the charges.

3. If the faculty member does not answer the charging authority's statement of charges, the Tenure Committee shall consider whether the stated grounds constitute adequate cause for removal. The Committee shall forward its written decision on this question, normally with reasons stated, to the faculty member, the charging authority, and the President.

D. Amendments: If evidence is objected to at the hearing on the ground that it is not within the issues raised either by the statement of charges or by the answer, the Committee may allow either to be amended and shall do so freely when, in its view, the presentation of the substantive issues will be served thereby. Where appropriate, the Committee shall grant a continuance to give the objecting party reasonable time in which to meet the evidence.

E. Performance of Duties Pending Proceedings: The faculty member may be relieved from such of his duties as the President may deem proper while proceedings are pending. In such event the President shall assign to the faculty member such duties as the President deems appropriate. The faculty member shall be continued on his regular salary while the proceedings are pending.

F. Committee Proceedings: If the faculty member submits an answer as contemplated in paragraph C, the following procedures shall be followed:

1. (a) Neither a regular nor an alternate Committee member shall sit when the Committee is considering a matter directly involving a departmental colleague of such Committee member or a school or college colleague of such Committee member when the matter involves a faculty member from a nondepartmentalized school or college.

(b) a Committee member shall not sit if he has reason to believe that some personal consideration might interfere with his reaching an unbiased conclusion.

(c) by peremptory challenge, not more than two members of the Tenure Committee may be disqualified by each side. Such challenges must be made in writing at least three days before the hearing is scheduled to begin;

(d) neither a regular Committee member nor an alternate shall sit if he is directly involved in the matter being considered.

2. The following persons are entitled to be present at the hearing:

The faculty member, his counsel, and no more than two other authorized representatives;
The charging authority, his counsel, and no more than two other authorized representatives;
The Committee members and the Committee's counsel;
The President or his authorized representative;
Such other persons as are specifically authorized by the Tenure Committee.

The Committee may, in its discretion, exclude witnesses from the hearing room except while testifying. Normally the hearing shall be closed unless in the judgment of the Committee it is to be open to the faculty member's tenured colleagues.

3. If the facts are in dispute, testimony of witnesses and other evidence relevant to the issues shall be received if offered.

4. The faculty member and the charging authority shall have the option of being represented by counsel or advisers, or both.

5. The hearing normally shall proceed as follows:

(a) Presentation of the evidence in support of the statement of grounds;

(b) the faculty member's evidence in answer;

(c) the rebuttal evidence;

(d) closing arguments.

If the circumstances warrant, the Committee may vary the normal order of proceeding.

6. The faculty member and the charging authority, their representatives, Committee members, and the Committee's counsel, if one is present, shall have the right to question all witnesses who testify orally.

7. The Committee, if it deems it desirable, may:

(a) Direct the parties to produce evidence on specific issues deemed significant by the Committee; and

(b) proceed on its own initiative to call witnesses to testify or introduce evidence on its own motion.

8. A verbatim record of the proceedings shall be kept. The cost of such record shall be borne by the University. At the conclusion of the proceedings, the Tenure Committee may, in its discretion, make the record of the proceedings available for review to persons or organizations not party to the proceedings but having an interest therein not inconsistent with the tenets of academic freedom, upon the request of either the President or the faculty member. The Tenure Committee shall provide a copy of the proceedings to the faculty member and to the charging authority. Record of these proceedings shall be held in permanent archives of the University and shall be available to users approved by the Tenure Committee.

9. If the faculty member's academic competence is questioned, the proof before the Tenure Committee shall be insufficient unless it includes testimony or written reports of teachers or other scholars, either from the University or from other institutions.

10. The parties shall have the opportunuity to be confronted by all witnesses. In the event witnesses cannot

appear in person, depositions from these witnesses can be presented. All evidence shall be made part of the record.

11. The Tenure Committee shall not be required to follow formal court procedures.

12. The Tenure Committee, at its discretion, may adjourn the hearing from time to time to permit the parties to obtain further evidence.

13. The faculty member and/or his counsel or representatives shall have all the authority possessed by the charging authority through the University to obtain information or to require the presence of witnesses and or the production of all other evidence relevant to the issues of the hearing.

G. Consideration of Matter by Tenure Committee:

1. In the usual case, the Tenure Committee shall await the availability of a verbatim record of the hearing before proceeding to a decision. It may request or accept written briefs from the parties. Where the Committee feels that a just decision can be reached in the absence of a verbatim record, it may, in its discretion, render a decision without waiting for the record. The burden of proof shall rest with the charging authority.

2. The Tenure Committee shall make written findings with respect to each of the grounds for removal presented and state its conclusions regarding them. A written opinion may be submitted by the Committee, or shall be submitted if a written request for an opinion is made by either the faculty member or the charging authority. If the Committee sustains the charges but concludes that censure rather than dismissal or reduction in pay would be appropriate, the Committee may so recommend, with supporting reasons.

*S-A 43, with Presidential approval November 14, 1972*

3. The President, the charging authority, and the faculty member shall be notified in writing of the Committe's findings, conclusions, and opinion, if one has been prepared.

4. The decision of the Tenure Committee shall close the matter unless either the faculty member or the charging authority shall file notice of appeal of the decision to the President within 30 days of the date of certified mailing of the Committee's findings, conclusions, and decision to the faculty member and the charging authority.

H. Consideration of Matter by President:

1. At the written request of the faculty member or the charging authority, the President shall review the case. His review shall be based on the written briefs and/or oral argument, as submitted by the parties, or their representatives, in their descretion. A reasonable time for preparation of briefs and presentation of oral argument shall be allowed by the President, and relevant notice of time and place shall be communicated to the parties immediately after receipt of the notice of appeal.

2. If the President affirms the decision of the Committee, the matter shall be deemed closed unless the faculty member files notice of the appeal of the decision to the Board of Regents within ten days of the date of certified mailing of the President's decision to the last known address of the faculty member.

3. If the President disagrees with the decision of the Committee, he may reverse the Committee's decision, giving his reasons in writing, and the matter shall be deemed closed unless the faculty member files notice of appeal of the decision to the Board of Regents within ten days of the date of certified mailing of the President's decision to the last known address of the faculty member; or the President may return the matter to the Tenure Committee with his objections specified. If the matter is so returned to the Tenure Committee, it shall reconsider the case, taking into account the stated objections and receiving new evidence, if necessary. After reconsideration, the Committee shall frame its decision and communicate it in the same manner as before.

4. If the decision is adverse to the faculty member and the faculty member accedes to it by failure to appeal to the Board of Regents within ten days of the date of mailing of the President's decision to the last known address of the faculty member, he will be deemed to have resigned at the request of the University as of the date of mailing of the President's decision.

I. Consideration of Matter by the Board of Regents:

1. If the decision of the President is adverse to the faculty member, at the written request of the faculty member, the Board of Regents shall review the case. The Board shall receive written briefs or oral arguments, or both, if tendered by the principals, or their representatives, and shall allow a reasonable time for the preparation of written briefs and presentation of oral arguments, relevant notices of time and place to be communicated to the principals and/or their representatives immedianely after receipt of the notice of appeal.

2. If the Board of Regents affirms the decision of the Tenure Committee, the matter shall be deemed closed. If the Board disagrees with the decision of the Tenure Committee, the Board may make a final decision to this effect and thereby bring the case to a conclusion, or it may return the matter to the President for referral to the Tenure Committee with its objections specified. If the matter is so returned, the Tenure Committee shall reconsider the case, taking account of the stated objections and receiving new evidence, if necessary. After reconsideration, the Committee shall frame its decision and communicate it in the same manner as before. After study of the Committee's decision, the Board of Regents shall make a final decision.

*Section 13-31, April 16, 1956; S-A 21, November 28, 1956; S-A 29, June 8, 1964; S-A 34, January 30, 1968; S-A 39, June 8, 1971; all with Presidential approval*

**Section 25-63. Dismissal of a Nontenured Faculty Member**

A nontenured faculty member may be dismissed prior to the expiration of the period for which he was appointed only for the grounds stated in Section 25-51, and in such cases the procedure described in Section 25-62 shall be followed.

*S-A 39, with Presidential approval June 8, 1971*

**Section 25-64. Discriminatory Reduction in Pay or Improper Non-Reappointment**

A. In a case in which a tenured or non-tenured faculty member alleges that he or she has suffered discriminatory reduction in pay, or in which a non-tenured faculty member alleges violation of the Faculty Code in connection with his or her non-reappointment, including denial of tenure, the faculty member making the allegation shall file a written complaint with the Tenure Committee. This complaint may include allegations of discrimination because of race, religion, color, sex, national origin, age, or handicap. The appropriate administrative officer shall file a written answer.

B. The procedures set forth in Section 25-62 shall be followed, with adjustments being made where necessary. The burden of proof shall rest with the faculty member making the allegation.

*S-A 39, June 8, 1971; S-A 55, May 25, 1977: both with Presidential approval*

**Section 25-65. Grievance Committee**

A. There shall be a Grievance Committee as a standing

committee of the faculty, appointed by the Senate upon the recommendation of the Executive Committee, with provision for additional nominations from the floor at the appropriate meeting of the Senate.

B. The Committee shall be composed of five regular members and nine alternates, who shall be voting members of the faculty. Not more than one member of any department shall serve as a regular member or an alternate on the Committee at the same time. No department chairman, dean, or administrative officer shall serve on the Committee. The Executive Committee of the Senate shall select a member of the Grievance Committee to serve as Chairman for one year.

C. Terms of regular Committee members shall be three years. No regular Committee members shall serve more than two consecutive three-year terms. Terms of regular Committee members shall be staggered, with new appointments made over each successive three-year period in the order of two appointments the first year, two appointments the second year, and one appointment the third year.

D.1. Alternate Committee members shall serve two-year staggered terms. Two alternate Committee members shall be selected by lot to sit with the Committee with respect to each matter which shall come before it for consideration. In the event one regular Committee member is absent or otherwise unable to serve at any time during the Committee's deliberations with respect to such matter, the alternate Committee member first selected by lot shall serve in his place as a full voting member with respect to such matter for so long as that matter shall be before the Committee. If a second regular Committee member is absent or otherwise unable to serve with respect to such matter, the other alternate selected shall similarly serve in his place with respect to such matter. No alternate member shall be selected to sit with the Committee a second time until all other alternates shall have been selected to sit with the Commitee once.

D.2. Neither a regular nor an alternate Committee member shall sit when the Committee is considering a matter directly involving a departmental colleague of such Committee member or a school or college colleague of such Committee member when the matter involves a faculty member from a non-departmentalized school or college.

D.3. A Committee member shall not sit if he or she has reason to believe that some personal consideration might interfere with his or her reaching an unbiased conclusion.

E. The presence of five members, including alternate Committee members entitled to vote with respect to a matter under the foregoing provisions of this section, shall be necessary for a quorum for conducting all business of the Committee.

F. Hearing and review procedure shall conform to the following:

1. Any faculty member may petition the Grievance Committee for redress of any grievance, including grievances based on allegations of discrimination because of race, religion, color, sex, national origin, age, or handicap (other than those cases described in Section 25-64A arising from non-reappointment, including denial of tenure, or discriminatory reduction in pay which are heard by the Tenure Committee).

2. If, in the judgment of the Grievance Committee, the petitioner makes an adequate showing that injustice of substantial proportion may have occurred, the Committee shall review the case. If, however, the Committee decides not to review the case, it shall present the petitioner with a short written statement of the reasons for its action, and a copy of this statement shall be retained in the Committee files.

3. If the Committee decides to review the case, it may proceed informally. If, however, the petitioner requests a formal hearing, and if the Committee judges that there exists a controversy over material facts, the Committee shall conduct a formal hearing according to the procedures of Section 25-62F, with adjustments being made where necessary.

4. At the conclusion of the Committee's review of the case, or after the formal hearing if one takes place, the Committee, or a majority thereof, shall make a written statement of its findings and recommendations. This statement shall be transmitted to the petitioner, to the persons against whom the complaint was lodged, and to the President of the University. The President shall file a written statement within 30 days indicating his disposition of the case, including a statement of reasons if the recommendations of the Committee are not implemented.

*S-A 39, June 8, 1971; S-A 43, June 13, 1972; S-A 46, February 12, 1975; S-A 55, May 25, 1977: all with Presidential approval*

## TENURE

Tenure provisions are designed to assure the widest possible range of freedom for scholarly inquiries in teaching, research, and extension for faculty members on permanent, full-time appointments and for those faculty members on permanent, not-less-than-half-time appointments where the basic expectations for job performance are the same as for full-time faculty positions associated with tenure. The decision to associate tenure with a position rests with the program, department, or division offering the position. This decision must be made at the time the job description is developed.

Tenure is granted only for academic rank or professional status within programs, departments, or service units. Department heads, deans, directors, and other administrative officers do not acquire tenure in administrative positions. To qualify for tenure, the faculty member is expected to observe all policies applying to faculty in the "Freedom and Responsibility" section of this *Faculty Manual* (see pages 4-7). Except in extraordinary circumstances, such as financial exigencies or elimination of function, these tenure provisions apply.

The acquisition of tenure requires affirmative action by the President of the University by delegation of authority from the Board of Regents. Tenure, once granted, is retained by the faculty member until he or she ceases to be an employee of the University or reaches normal retirement age.

When a former faculty member who had tenure is reemployed in a comparable position within two years, tenure may be given immediately, though the usual procedures must be followed. In other cases, the time of prior service to be counted toward tenure must be negotiated at the time of reemployment.

If a tenured person takes a different faculty position within the institution on a permanent basis, the receiving department must assume the tenure obligations accompanying the transfer. In the special case of the formation of a new unit, the prior tenure of each faculty member will be transferred to the new unit.

A faculty member whose appointment is budgeted on a continuing basis in more than one unit may be granted tenure, provided that the positions are permanent and provided that tenure is granted in all units simultaneously. Such tenure implies no obligation for one unit to increase the employment of the person beyond the budgeted portion in the event that duties should cease to exist in another unit. This policy applies to a person holding a joint appointment in instructional units as well as to a person with duties divided between teaching and nonteaching responsibilities in a staff having faculty status.

In special circumstances involving a joint appointee, one unit may request permission to assume an additional portion or all of the tenure responsibility for the faculty member, and in this case the other unit or units accept no responsibility for continuation of the position.

If the duties of a nontenured faculty member change so as to result in a shift between units in the budgeted appointment on a continuing basis, the date of eligibility for tenure consideration remains based on the original appointment to the faculty.

A person who is appointed to a temporary position, whether part-time or full-time, is not eligible for tenure. If a person in a temporary position is subsequently given an appointment without terminal date, the Principal Administrative Officer, at the time of the permanent appointment, shall recommend to the Vice President Academic for consideration the extent to which past service shall count toward eligibility for tenure. This decision shall be included in the person's employment record.

CRITERIA

The criteria and procedures pertaining to tenure are of basic importance in the development of excellence within the faculty of the University. General criteria for faculty review are outlined in this *Faculty Manual*. These are to be articulated and supplemented by tenure criteria developed at the department and/or college level to emphasize goals and objectives. Input from faculty members of the unit and students, if appropriate, shall be utilized in the development of the statement of criteria.

In general, departmental criteria appropriate to the particular needs should be directed toward excellence in most or all of the following areas: teaching effectiveness, research or creative scholarship, extension education, extension service and/or other public service, effort toward professional service and advancement, academic and professional leadership, services to the University, and ability to interact with colleagues and students. Long-term support of faculty members requires commitment in terms of salary and other resources; therefore, criteria for tenure must include consideration of contributions toward program objectives.

The proposed departmental criteria shall be provided the cognizant administrators (such as dean of the college, director, Vice President Academic). After administrative approval, a copy of the approved departmental criteria shall be provided to every faculty member of the department or unit.

Periodic evaluations of nontenured faculty members are to be conducted at the departmental level. These are to involve all tenured faculty members, and student evaluations are to be included where applicable. The tenured members of the unit are expected to establish how the evaluation is to be accomplished (for example, in an open meeting, in written evaluations submitted directly to the department head, or by other appropriate means). Following completion of the evaluations, the department head is to meet individually with each nontenured faculty member to discuss the results and implications of the evaluation. The purpose of the conference is to aid the faculty member in understanding how tenured members view his or her performance in light of the departmental criteria.

Tenure should be recommended for a faculty member only after a thorough assessment and evaluation of the quality and extent of the individual's performance in terms of the department and/or college criteria. Input into tenure consideration should come from several levels, including students (when the person has instructional duties), other faculty, and administrative officers.

ELIGIBILITY AND PROCEDURES

A person employed *full time* at the rank of instructor or assistant professor, or comparable rank, becomes eligible and must be considered for tenure during the fifth year of service at Washington State University, with tenure, if granted, to be effective at the beginning of the sixth year. A person employed *full time* at the rank of associate professor or comparable rank is to be considered for tenure during the third year of service at Washington State University, with tenure, if granted, to be effective at the beginning of the fourth year. A person employed at the rank of instructor or assistant professor, or comparable rank, who is on not-less-than-half-time, permanent appointment is to be considered for tenure during the sixth year of service at Washington State University, with tenure, if granted, to be effective at the beginning of the seventh year.

Any exceptions to these procedures and any special provisions, including any decision on the amount of prior service at another institution to be considered toward tenure, must be included in the original appointment. Time spent on leave without pay is not included in time in rank applicable toward tenure.

Computation of eligibility is made from the preceding September 16 for persons employed at any time during the first semester and from the following September 16 for persons employed during the second semester. Appropriate adjustments are made for persons on twelve-month appointments.

Faculty members without tenure who are promoted to a higher rank are eligible for tenure only after completion of the terms of service required for eligibility for tenure in the rank of their original appointments.

If the fraction of a faculty member's part-time appointment is increased in the same department after he has been granted tenure, tenure for the increased portion of the appointment must be granted automatically. If the increase is for less than half time and is in another department or program, no tenure will be associated with the increased portion of the appointment.

At the time of tenure consideration, all faculty members with tenure in the candidate's department, including those who will retire prior to the effective date of such grant of tenure, are given the opportunity to fill out a form for nomination for tenure. (At least five persons must complete this tenure form. The Vice President–Academic determines who shall complete the form when there are not five eligible voters in a unit.) The recommendations are forwarded by Principal Administrative Officers to the Vice President–Academic.

The complete curriculum vita file (referred to on page 27) for a faculty member under tenure review will be available to each tenured member within the department or unit. It is expected that professional evaluations for a candidate shall be obtained from persons in other units of the University and from outside the University.

Tenure must be granted, deferred, or denied. Grant of tenure becomes effective on September 16 of the fourth year, the sixth year, or the seventh year, respectively. The grant of tenure may be deferred; however, a person ordinarily will not be continued on a nontenured status for more than two years. Upon denial of tenure, notification of nonreappointment will be given at least twelve months in advance of the termination of services and no later than the end of the third year, the fifth year, or the sixth year, respectively, after the initial appointment.

Notification of the granting, deferral, or denial of tenure shall be given in writing to the particular faculty member as early as possible in the academic year.

When the President is going to recommend to the Board of Regents that tenure be denied a faculty member, that faculty member will be so informed at least 48 hours prior to the meeting of the Board of Regents at which tenure decisions will be reported. Up to the time that the meeting of the Board of Regents commences, the faculty member may, if he or she chooses, resign from the University. The effective date of such resignation shall be the date upon which the appointment would have been terminated if tenure had been denied, or earlier if mutually agreed to by both parties. If the faculty member does resign, no reference will appear in his or her personnel file that tenure was denied or that a recommendation to deny tenure was made.

A faculty member who has been denied tenure may, within 30 days after notification of nonreappointment, petition the Faculty Status Committee to review the decision; either based upon an allegation of violation of academic freedom or based upon an allegation of inadequate consideration.

If a review by the Faculty Status Committee is requested, the Committee shall determine its own procedures for hearing the matter, shall conduct its review as expeditiously as possible, and shall report its findings to the President, or his designee, and to the faculty member within 60 days after the request. The President shall then communicate a decision to the faculty member within 15 days.

A tenured person whose position has been eliminated also has the right of appeal to the Faculty Status Committee.

3.06 Kinds of Appointments

A. With the exception of special appointments clearly and specifically limited to a brief association of one (1) year or less with the university (e.g., visiting faculty, part-time faculty, acting appointments, emergency appointments, lecturers, senior instructors, consultants), and appointments or reappointments of retired faculty members on special conditions, all full time appointments to the rank of instructor or higher shall be of four kinds:

(1) probationary appointments;

(2) appointments with tenure;

(3) administrative appointments;

(4) continuing appointments without tenure (teaching associate, lecturers, etc.).

B. Special appointments ("term contracts") do not carry the right of renewal. Each such appointment contract shall specify a starting date and an expiration date. Such contracts do not carry implied or contractual understandings which provide entitlement to further employment. The university is not required to provide a statement of reasons when it decides not to renew the contract of a "term" faculty member.

C. Those who hold probationary appointments and continuing appointments without tenure are automatically entitled to a new contract if they are not notified of non-renewal according to the notice requirements of this code. If they are notified of non-renewal, they do not have "property rights" of renewal and are not entitled to a statement of reasons.

3.09 Types of Appointments

A. Appointments are planned to meet the needs of the university from September of one (1) year to the September of the following year. The four (4) intervening quarters may be utilized in faculty appointments unless as provided otherwise in sections of this code.

(1) Administrative faculty, teaching associates, professional librarians and professional media specialists have faculty status but their appointments may differ from those of other university faculty including academic department chairmen, in length, salary and vacation policies in accordance with the needs of the university and the normal practices of the respective professions.

(2) A regular appointment for the teaching faculty and department chairmen is for the academic year as defined in Section 1.03.

(3) A special appointment consisting of two (2) academic year quarters and a summer assignment at the regular summer salary rate (2/9) may be negotiated by a faculty member and the university.

(4) A regular full-time contract year appointment may be for any three (3) terms from among the fall, winter and spring quarters and a contiguous summer session if the summer session salary is augmented to a full quarter's compensation and the work assignment adjusted accordingly. Such contract year appointments shall be made only with the concurrence of the appointee.

(5) Nothing in this Section (3.09) shall preclude the university from offering employment to a faculty member during a period when he normally would not have been under contract, nor of contracting with the faculty member for part-time service or service of less than three (3) quarters each academic year.

3.12 Non-Tenured Appointments--Length of Term

A. Except as otherwise provided in this code, non-tenured appointments shall be made for no more than one (1) academic year at a time.

3.39 Reappointments--Procedures

A. Final recommendations concerning the reappointment of any faculty member shall be submitted to the president of the university by the vice president for academic affairs. Each school dean advises the vice president, following a procedure which utilizes recommendations or information from four possible sources, as follows, provided that faculty members with administrative appointments or for whom the following is inappropriate shall be fairly evaluated by similar procedures:

(1) Each faculty member in a candidate's department or section may submit a statement to the appropriate dean, using forms provided for the purpose, indicating his recommendation regarding re-appointment;

(2) Each department or section shall submit a departmental recommendation regarding reappointment, using whatever committee procedure it desires in arriving at the recommendation;

(3) Each department or section chairman shall submit to the appropriate dean or director his independent recommendations regarding reappointments;

(4) Each faculty member under consideration may submit materials to his department chairman and school dean regarding his reappointment which he believes will be helpful in an adequate consideration of his circumstances.

3.42 Definition of Tenure

A. Tenure entitles a faculty member to continuous appointment in a specific department or unit of the university, or in the university as a whole, and retention of rank without discriminatory reduction of salary and without dismissal except for adequate reason, determined according to the requirements of due process as set forth in the Faculty Code.

B. The granting of tenure is a discretionary decision. Tenure should be granted to faculty members of such character and ability that the university, so far as its needs, resources and state laws permit, can justifiably undertake to employ them for the rest of their academic careers. Such a decision must be considered carefully. The granting of tenure shall be a specific act, even more significant than promotion in academic rank, and should be exercised only after careful consideration of the faculty member's scholarly qualifications, teaching ability, character, and other qualifications specifically related to the university's needs. Specifically, all individuals and committees responsible for tenure recommendations shall apply in such recommendations strong positive evidence of effective teaching, clearly demonstrated ability to produce solid research or works of sound scholarship or high artistic merit, and a record of effective and significant contribution to the proper functioning of the university and the educational needs of students.

3.45 Eligibility for Tenure--General

A. Only ranked faculty members as listed in Section 2.05 of the Faculty Code are eligible for tenure. Normally, faculty members with academic rank whose duties are entirely administrative or combine both administrative and part-time teaching responsibilities are eligible for tenure only in their capacities as teaching faculty members, and upon recommendation of the department or program in which they hold rank. The tenure of a faculty member who holds an administrative position extends only to the academic rank which he holds conjointly with such administrative position.

B. Appointment to administrative office, or the loss of same, shall not deprive the appointee of continuation of tenure in the highest professional rank in which he held tenure prior to, or during, his appointment to such administrative office; his salary shall not be lower than the average salary of those who have held similar rank positions, pro-rated to the appropriate yearly basis.

C. Faculty members with rank on full-time institutional assignments at other locations shall accrue tenure eligibility in accordance with the provisions of this code as if they were employed on the main campus of the university in Ellensburg.

3.48 Acquisition of Tenure--Probationary Periods

A. The decision whether to grant, deny or defer tenure shall be made in a manner consistent with the following provisions regaring probationary periods.

(1) Appointments shall not be made for more than one (1) academic year at a time.

(2) Faculty members who were employed full time on a regular appointment in their current assignment by the university prior to September 1, 1975, and who were appointed to the academic rank of instructur or higher may be granted tenure effective the beginning of the academic year immediately following a four (4) year period of full-time employment with the university and a department or program, the decision of tenure to be made in thefourth year;

(3) Faculty members whose full-time employment on a regular assignment becomes effective after September 1, 1975, and who are appointed to the academic rank of instructor or higher may be granted tenure effective the beginning of the academic year following a six (6) year period of full-time employment with the university, the decision to be made in the sixth year;

(4) A faculty member may, when circumstances make it justifiable, be granted tenure by the Board of Trustees, effective at a specified time prior to the expiration of a four (4) or six (6) year probationary period with the university, and occasionally may be granted tenure at the time of original appointment; such appointment shall ordinarily be upon recommendation of the appropriate academic department and administrators;

(5) The decision to grant tenure may be deferred, with the provision that a faculty member shall not be reappointed with non-tenured status for more than one (1) academic year immediately following the expiration of the applicable six (6) year period, or for more than three (3) academic years following the expiration of the applicable four (4) year period;

(6) Faculty members with academic rank other than department chairmen, whose duties are entirely administrative or combine both administrative and part-time teaching responsibilities, may be granted tenure by the Board of Trustees effective at the beginning of the academic year following the expiration of the applicable four (4) or six (6) year probationary period. Eligibility for tenure shall be determined, if possible, at the time of the assumption of such administrative responsibilities, by the president or vice president for academic affairs in consultation with the appropriate academic department or program; and such appointment shall ordinarily be upon recommendation of the appropriate department and administrators;

(7) Faculty orginially appointed as substitutes for faculty on leave for an academic year or more; faculty appointed in an emergency situation for a term of less than one (1) academic year and a faculty member who has left the university but is subsequently rehired, who each later receive regular appointments on the faculty may petition the Board of Trustees through the appropriate university administrators to count their substitute, prior, or emergency service as a part of their probationary periods; if such service was full-time;

(8) A faculty member may request a review of his qualifications and performance by the tenured members of his department at any time during the probationary period.

3.51 Tenure--Procedure for Granting

A. At the time tenure decisions are to be considered (normally in spring quarter) each dean or unit director shall submit his tenure recommendations to the vice president for academic affairs. Such recommendations shall be based on written data from a combination of sources as follows:

(1) Each faculty member with tenure in the candidate's department or section may submit a written statement with his recommendation, using forms provided;

(2) The academic department/section may submit a departmental/ section recommendation in writing using whatever committee procedures it desires;

(3) The department/section chairman shall submit his independent recommendation in writing;

(4) The faculty member under consideration, if he so desires, may submit data in support of his candidacy;

(5) The provisions in Section 2.30 A (1), may be applied if necessary for those faculty members who are in programs or on special assignments outside of departments.

3.54 Notice of Termination by Faculty Member

A. A faculty member, defined in Section 1.01 A (1), may terminate his appointment at the university effective at the end of an academic year, provided he gives notice at the earliest possible opportunity, but not later than three (3) months before the end of his duties during an academic year, or thirty (30) days after receiving notification of the terms of his appointment, if any, for the next academic year, whichever date occurs later. The faculty member may properly request of the Board of Trustees, through the appropriate chairman, dean, the vice president for academic affairs and the president a waiver of this requirement of notice in case of hardship or in a situation where otherwise he would be denied substantial professional advancement.

B. Faculty members as defined in Sections 1.01 A (2) and 1.01 A (3) are expected to give at least three (3) months notice of resignation. Such faculty members may also properly request of the Board of Trustees, through the appropriate chairman, dean, the vice president for academic affairs and the president a waiver of this requirement.

C. Unless otherwise mutually agreed, any faculty member as defined in Section 1.01 who terminates his service without giving notice or who fails to complete an academic year or other terms for which he shall have been employed, except under highly unusual circumstances, is regarded as having breached his contract with the university and inquiring prospective employers will be so informed. Requests for acceptance of resignation of such faculty members may be granted with prejudice.

D. Breach of contract can place the university in a position of hardship in meeting its responsibilities to its students and its services to the state. Such action on the part of faculty will be regarded by the university as a breach of professional ethics. The faculty member so breaching his contract may be held liable to the university for any damages arising from that breach.

3.55 Resignation

A. In the case of resignation, an official letter of resignation should be written by a resigning faculty member to his section or department chairman for acceptance and for forwarding to the dean or unit director with the departmental/section recommendation. The letter should contain the date of writing, the effective date of resignation, and the signature of the faculty member. The original of this letter shall be retained in the personnel folder of the resigning faculty member.

B. The dean or unit director shall notify the office of the vice president for academic affairs of the resignation and indicate his recommendation on its acceptance. Included with the letter of transmittal should be two photostatic copies of the original letter of resignation.

C. The vice president for academic affairs will forward one copy of the letter of resignation to the president with his recommendation as to its acceptance and for possible inclusion on the Board of Trustees' agenda. All resignations of faculty members shall be subject to the approval of the Board of Trustees.

3.60 Non-Reappointment--Notice Requirements

A. Except with dismissal or termination as provided in this code written notice by the president or his designee of a decision not to renew any faculty member's appointment or of any intention not to recommend reappointment of any faculty member to the Board of Trustees shall be made according to the following schedule:

(1) By March 15 or at least three (3) months before the end of his duties during the first academic year of service at the university, or if a one (1) year academic appointment terminates during an academic year, at least three (3) months in advance of its termination;

(2) Not later than February 1 of the second academic year of service at the university, or if a second year appointment terminates during an academic year, at least five (5) months in advance of the effective date of termination;

(3) By December 15 of the third academic year of service at the university, if the appointment expires at the end of the academic year, or if a third year appointment terminates during an academic year, at least six (6) months in advance of the effective date of termination;

(4) At least twelve (12) months before the expiration of an appointment after three (3) or more years of service at the university.

3.66 Non-Reappointment--Academic Freedom

A. If a faculty member on probationary or special or administrative appointment, who is not tenured, alleges that considerations violative of academic freedom significantly contributed to a decision not to reappoint him, his allegation will be given preliminary consideration by the Faculty Grievance Committee, which will seek to settle the matter by informal methods. The faculty member making the complaint is responsible for stating the grounds upon which he bases his allegation, and the burden of proof shall rest upon him. If he succeeds in establishing a prima facie case in the judgment of the Faculty Grievance Committee, it then becomes incumbent upon those who made the decision not to reappoint him to come forward with evidence in support of their decision.

3.72 Termination of Appointments--Cause

A. Termination of an appointment with continuous tenure, the continuing appointment of teaching associates, or of a special, or an administrative or a probationary appointment prior to the expiration of the term of appointment may be effected by the institution only for sufficient cause. Sufficient cause for termination shall be:

(1) Insubordination; or

(2) Conviction of a felony; or

(3) Abandonment of positions; or

(4) Physical or mental incapacity; or

(5) Grievous or willful violation of published institutional and related board rules and regulations; or

(6) Conviction for any of the following offenses:

(a) Aiding, abetting, or participating in any unlawful act of violence; or

(b) Aiding, abetting, or participating in any unlawful act resulting in the destruction of state or university property; or

(c) Interference by force or violence, singly or in concert with others, with any administrator, faculty member, employee, or student of the institution who was in the peaceful discharge or conduct of his or her duties (RCW 28B.10.570); or

(d) Intimidation by threat of force or violence, singly or in concert with others, of any administrator, faculty member, employee or student who was in the peaceful discharge or conduct of his or her duties (RCW 28B.10.571); or

(7) Any material and substantial interference with the orderly conduct of the educational process, the operation of the institution, or the rights of others. (Tinker case, United States Supreme Court); or

(8) Fraud in securing employment; or

(9) Conflict of interest (RCW 43.19.1937; RCW 42.18.010-900); or

(10) Gross misconduct; or

(11) Academic incompetence.

B. Termination of an appointment with continuous tenure, the continuing appointment of teaching associates, or of a special, or an administrative, or a probationary appointment may also be effected by discontinuance or termination of a department, program, or division, or reduction in personnel due to (Section 3.78):

(1) Enrollment loss; or

(2) Educational policy change; or

(3) State or federal legislative action; or

(4) Bona fide financial exigency; or

(5) Curtailment of work.

By-Laws – 401.00.00

**Academic Appointment and Employment Policies**

**Academic Rank**


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**401.00.00 Appointment and Employment Policies—Academic Rank.** All faculty appointments and reappointments are made by the Board of Trustees and are not effective until the Board has taken formal action.

**401.10.00 Types of Appointments.** Appointments with academic rank shall be designated under one of the following categories in the Letter of Appointment:

**401.11.00 Full-time Appointment.** Appointment to a full-time position presupposes that the staff member will fully meet the professional responsibilities of his college assignment and that work essentially related to those responsibilities will receive his primary attention and energies. Remunerative employment not connected with the College must be in accordance with the provisions of Section 401.60.00.

A normal full-time contract-year may be for any of three terms from among the Fall, Winter, Spring quarters or for two such quarters and a contiguous Summer Session assignment equivalent to a quarter in load and salary. Faculty may be assigned to a summer term as part of their normal contract year only if it is their preference and with the approval of the department and the dean or if a fiscal exigency exists (cf. 401.43.42).

**401.11.10 Regular Appointment.**

**401.11.11 Probationary Appointment.** Subject to the provisions of section 401.43.10, the probationary period for faculty appointed after May 1, 1974, including faculty with prior college teaching experience, shall normally be six years. (Faculty initially appointed prior to May 1, 1974, shall,

in respect to probationary appointment, continue under the By-Law provisions in effect as of January 1, 1971, unless they elect in writing to be covered by the new provisions.) No combination of full-time term or probationary appointments may exceed seven years without tenure being granted except as provided for in Section 401.11.20 relative to externally funded programs.

Full time faculty on probationary status will be evaluated by the department chairman and by the departmental and/or unit personnel committee to determine reappointment annually during the first three years of full time service and provided with notice relative thereto in accord with Section 401.43.11. Such evaluations will be based upon evidence provided by student evaluations and appropriate individuals and committees. These evaluations shall be the basis for recommendations respecting reappointment, and shall be transmitted to the unit Dean for his review and recommendation to the VPAA.

All evaluations and recommendations shall be confidential to the members of the personnel committee(s) and administrators involved in the evaluation until all such material has been reviewed by the unit Dean. When a faculty member is reappointed (following evaluation for retention) in the first three years, the department chairman shall prepare a summary of evaluations which shall be reviewed by the unit Dean. The chairman shall then provide a copy of this summary to the faculty member and discuss it with him. The original will be signed by the faculty member and retained in his personnel file in the office of the unit Dean. The file shall contain all formal evaluations and recommendations, along with data used in the evaluations. The faculty member shall have the right to examine the file.

When a faculty member is not retained, the Vice President for Academic Affairs shall, upon request of the faculty member, provide a written statement of reasons for the decision (see Section 401.43.12). All written material relating to the decision, including information used in the course of the evaluation, department chairman and committee evaluations, and all recommendations shall be retained in the faculty member's personnel file and such file will be available to the faculty member for examination. The faculty member shall have the right to appeal this decision (see WAC 172-129).

A person on probationary appointment shall in the spring of his third year at Eastern be subject to a cumulative evaluation by the personnel committee of the department and/or unit (including appropriate participation by students in furnishing evidence used), and by the department chairman independently, each of which shall forward a recommendation to the unit Dean as to whether the faculty member should be:

(1) Continued on probationary status for a three-year period on a three-year contract.

(2) Continued on a term appointment.

(3) Given a one year terminal contract, notice thereof to be given by June 1 of the year preceding the terminal contract year.

The unit Dean will review the recommendations and forward them along with his own recommendation to the VPAA for his recommendation to the President for action recommendation to the Board of Trustees.

Faculty continued on a probationary status following the third year evaluation will be provided a statement of performance expectations against which they shall be evaluated when considered for tenure. This statement of performance expectations will be provided by the department chairman after consultation with the faculty member. Evaluation shall take place in the spring of the last year of the six-year probationary period. This evaluation will result in either (1) granting tenure, or (2) a one-year terminal appointment contract for the following year.

**401.11.12 Tenure Appointment.** Appointment to tenure may be granted to a regular full-time staff member who serves at least half time as a teacher or as a professional librarian, following a probationary period and based upon an explicit tenure evaluation. Tenure as used herein is defined as the right, contingent upon competent professional service, of an individual to be continued in his faculty appointment at a comparable academic rank and salary, subject to these By-Laws. After the letter of appointment to tenure status, further annual contract letters will constitute notice of assignment, salary and rank for the next year.

**401.11.20 Term Appointment.** Term appointment shall be only for the period stated, and notice of non-renewal or termination shall not be required at any time. An individual may receive more than one full-time term appointment, but may not be given more than three successive and continuous full time academic year term appointments; except that if a term appointment is to a position which is dependent upon an externally-funded project or program the successive term appointments may coincide with the duration of that project or program. (Persons holding a full-time term appointment on May 1, 1974, may be considered for additional term appointments up to the previous limit of four consecutive or six total term appointments, but if such person is at any time given a probationary appointment, the probationary period shall not be less than one full year prior to the review for tenure status because of such prior term appointments counted.) Part-time term appointments or term appointments for less than a full academic year shall not be counted for tenure consideration. If a person who has been on full-time term appointment is given a probationary appointment, his years of full service on term appointment shall count on the total probationary period. Individuals who are placed on a probationary appointment following term appointment(s) will be given a contract as follows: (1) after one or two years of term appointment, an annual probationary appointment, (2) after three years of term appointment a three-year probationary appointment under the conditions specified in 401.11.11.

Specific examples of term appointments include (but are not limited to):

(1) **"Visiting."** A person employed for a specified term to fill in for a faculty member on leave, or to fill a position temporarily, shall be designated "visiting" with the appropriate title.

(2) **"Lecturer."** The rank of "lecturer" may be used to employ a person of unusual abilities whose formal qualifications may not relate to the current salary schedule and hiring in policies. If a person so classified is later considered for permanent employment, he or she must be considered in relation to the full criteria established for the contemplated rank.

**401.12.00 Part-time Appointments.** A part time faculty appointment is one which clearly limits the contract teaching

duties of the individual with the College to less than normal full time teaching assignment for the contract period. Such part time appointments shall not be in any way applicable to the computation of time of employment for tenure purposes. Except for OASI, fringe benefit programs do not apply to part time appointments.

**401.12.10** Graduate Fellow, Teaching Assistant, and Undergraduate Assistant appointments are part time appointments.

**401.12.20** Academic Faculty and Academic Professional Staff part time appointments shall be so designated with the appropriate title or rank, and shall not be made for a period longer than one year at a time.

**401.12.30 Adjunct Appointment.** Specially qualified individuals who agree to assist with instructional or research programs with nominal or no stipend, may be appointed as "Adjunct" staff members with academic rank, subject to specific original approval by the Vice President for Academic Affairs. Such appointments are not intended to replace regular part-time teaching appointments, but rather to give formal recognition to professional persons from other fields who are directly contributing to the academic program. Such appointments may be renewed annually, but should not extend beyond the period of active involvement, and should not be merely "honorary" in use.

**401.12.40** College staff members whose basic employment is in conjunction with a program or activity of the College other than that normally carrying academic rank, may be designated as part-time faculty during the time when part-time teaching is assigned to the individual. In such cases the part-time faculty designation shall not in any way promise full faculty status nor count as time toward tenure as a faculty member.

**401.12.50 Professor of the College.** The Board of Trustees may designate as "Professor of the College" an individual who holds the academic rank of Professor and who wishes to relinquish full-time teaching or administrative responsibilities after a period of outstanding service and to assume reduced duties. The Board will annually establish the salary of such a person in accordance with his assigned duties.

**401.18.00 Faculty Recruitment.** Faculty recruitment is primarily the responsibility of the departments involved. Although the department chairman or his designee will coordinate activities, department members or a committee representing them, and the unit Dean, shall be involved in the review of credentials and interview with candidates. An offer may be made only after departmental faculty and other appropriate parties have been consulted and a written approval by the department submitted to the VPAA.

The standards and criteria for the authorized position must be stated and made fully available. Faculty recruitment shall be subject to the provisions of the College's Affirmative Action programs, as adopted from time to time by the Board of Trustees.

Only the President, or the Vice President for Academic Affairs or his specifically appointed delegate is authorized to make an offer of appointment on behalf of the College, and only those terms of employment which are made in writing to the appointees shall be binding upon the College.

**401.20.00 Original Appointment.** Original appointment to the Academic Staff shall be made by means of a Letter of Appointment which becomes effective when a copy is returned with the appointee's signature. The letter shall set forth the terms of employment, including by reference or definition the duties and responsibilities of the position, the type and term of employment, the salary, and the specific period of probationary status, if any. The initial rank and salary agreements accepted by the candidate will be deemed to represent the understood conditions at the time of employment and shall not be subject to subsequent review for purposes of later adjustments.

**401.20.10 Original Appointment Rank.** As a general policy, new appointments will be made at the rank of instructor or assistant professor. A new appointment can be made at the rank of associate professor if the candidate meets the paper qualifications for the rank and the application has the support of the department members. Original appointment of candidates who do not meet the paper qualifications at the rank of associate professor, and all original appointments at the rank of full professor may be approved (upon recommendation of the Faculty Affairs Council) only when the candidates possess outstanding qualifications which are essential for carrying out an effective program.

**401.20.11 Preparation and Experience.** The academic preparation and experience standards for initial regular appointment shall correspond to the normal qualifications for each academic rank. Appropriate additional experience or graduate credits may be used in determining the rank assigned. (See 403.20.10.)

**401.20.12 Academic Records.** Candidates and appointees will be responsible for having official transcripts of all their undergraduate and graduate credits sent from the insitution(s) at which the work was taken. Such records may not later be released to the individual or to other institutions.

**401.20.20 Appointment Salary.** The base salary for original regular appointment shall be specifically agreed upon with the candidate and stated in the Letter of Appointment. This figure will reflect consideration of the candidate's combined qualifications of preparation, experience and related accomplishments. Ordinarily the initial salary will be in the lower levels of the salary range for the rank assigned. Every attempt will be made to maintain the relative salary advantage of persons already serving the college, given equivalent qualifications.

**401.20.21 Degree Contingency Contracts.** Persons who do expect to receive the doctor's (or master's) degree prior to or during the academic year of initial employment may be issued a contract carrying a base salary appropriate without the degree, with the provision for a higher base salary rate reflecting the degree, which will become effective in the month following receipt by the College of an official statement that the degree has been completed. Such contingency contracts will be written for the first year of employment only, and any subsequent appointments will be with the appropriate base salary. It will be the policy of the College to review the conditions of the existing contract of a staff member on regular appointment whenever he completes the requirements for terminal degree preparation.

**401.21.00 Returning Appointees.** A faculty member who has voluntarily terminated his appointment at EWSC shall be regarded as a new appointee if he returns in any form of appointment.

**401.30.00 Letter of Appointment.** Upon reappointment or continuation of appointment of a faculty member, a letter of appointment will be issued each year, setting forth the essential terms of the individual's employment, including a statement of rank, salary, teaching assignment as to quarters of service, and any administrative assignment. Two copies of the Letter of Appointment shall be presented to the appointee on or before April 1 preceding the contract year, except that when budget determinations delay salary information, the Letter of Appointment will be deferred until salary information is available. One copy of the Letter of Appointment signed by the appointee shall be returned to the office of the Vice President for Academic Affairs within fifteen (15) days of its receipt to indicate the appointee's acceptance of the conditions of appointment.

**401.40.00 Termination of Appointment.** Appointment may be terminated in accord with the following standards:

**401.41.00 Termination by Mutual Agreement.** An appointment may be terminated at any time by mutual agreement between the appointee and the College.

**401.42.00 Termination by the Individual.** A faculty member who intends to resign his appointment or not to accept a reappointment should give definite written notice to his Dean as early as possible so that program needs may be adequately met. This notification should not be later than fifteen (15) days after receipt of the individual's Letter of Appointment.

**401.43.00 Termination by the College.**

**401.43.10 Non-renewal of Faculty Holding a Probationary Appointment.** A faculty member in his first three years of probationary appointment will be considered annually for reappointment in accord with faculty personnel review procedures. (See 401.11.11.) This assurance of review shall in no way guarantee nor convey an automatic right to reappointment. Non-renewal shall be an institutional decision based upon a regular personnel evaluation procedure and consideration of institutional needs. (See 401.11.11 and 401.43.30.)

**401.43.11 Notice of Non-renewal.** Notice of intent not to renew an appointment for the following year shall be given in writing to the individual in accordance with the following standards:

(1) Not later than March 1 of the first academic year of service if the appointment is to expire at the end of that year.

(2) Not later than December 1 of the person's second year of appointment if his appointment is to expire at the end of that year.

(3) Additionally, notification must be given no later than June 1 of the person's second and subsequent academic years of service if his appointment is to expire at the conclusion of his next academic year of service.

For purposes of these notifications and the definition of the probationary period, a person who has served full time for only one quarter in an academic year will be regarded as being in his first probationary year in the next succeeding full year of appointment and will be notified in accord with those standards; one who has served full-time for two quarters shall be regarded as being in his second probationary year in the next succeeding full year of appointment. Appointment to the Summer faculty will not affect this principle.

**401.43.12** Persons who receive notice of non-renewal of a probationary appointment shall, upon their request, be provided by the Vice President for Academic Affairs with a written statement of reasons for the decision. Unless specifically delegated in writing by the VPAA, no other person or committee is authorized to issue such a statement of reasons for the decision. The statement need not allude to reasons of incompetence, but shall be based upon the recommendations of the department chairman, the unit personnel committees, the academic deans, the VPAA and the President.

**401.43.20 Termination of Faculty Holding Term Appointment.** Term appointment shall be only for the period stated, and notice of non-renewal or termination shall not be required at any time.

**401.43.30 Termination for Program or Fiscal Needs.** Termination for program or fiscal needs is subject to appeal (see WAC 172-129).

**401.43.31 Adjustment of Staff to Program Needs.** The College will make its best efforts to plan needed changes in educational programs so as to minimize sudden unexpected shifts of staffing of program units. In meeting changes brought about by shifts in student enrollment or program development it is frequently necessary to change the faculty allocation to a given department. Such decisions shall be made by the Vice President for Academic Affairs in consultation with the deans and department chairmen in the units affected.

When the Vice President for Academic Affairs believes that the appropriate balance of faculty within a specific department or among the various departments is so distorted that it cannot be corrected without affecting positions held by probationary and/or tenured faculty, he shall so notify the President and the chairman of the Academic Senate.

The Senate shall designate a faculty committee to work with the Vice President for Academic Affairs and the appropriate deans and chairmen of the units concerned to develop an institutional response to the apparent faculty imbalance as perceived by the VPAA. This group will report to the Senate and to the President. The final responsibility for institutional action shall rest with the President.

When reductions are made they shall be in the order: part time, temporary full time as necessary to preserve academic programs. If reductions are required beyond this point the following standards shall be observed:

(1) The department affected shall be notified in writing of the necessary reductions by the Vice President for Academic Affairs. Within fifteen (15) working days the department, in a manner to be determined by the membership, shall designate the positions including appropriate qualifications which are required to meet program needs. These positions will be filled in the order of seniority by qualified tenured members of the department and then by qualified non-tenured members.

(2) Following receipt of the position designations from

the department the VPAA will notify within five (5) working days those faculty members who must be terminated. Such faculty may appeal this decision as provided in the By-Laws (see WAC 172-129).

(3) Except in cases of fiscal exigency, any probationary or tenured faculty member terminated solely for program reasons will be given at least twelve (12) months' notice.

(4) Every effort shall be made to find suitable employment within the College for individuals terminated under this section. This may include opportunities for faculty members to engage in appropriate retraining. In all cases, no person may be relocated without the consent of all departments concerned.

(5) If an individual is terminated, he shall be placed on a re-employment list. If two or more individuals within a given department are terminated, the College shall place them, in order of seniority, on the re-employment list. Should a vacancy be created in that department by (1) departure of one of the remaining department members whose position the terminated faculty member is qualified to fill, or (2) an increase in the faculty allocation to that department at any time up to and including the third academic year following the individual's actual termination such vacancy cannot be filled until such qualified former faculty member has been offered the position in writing and given 30 days in which to accept or reject it. Offer of re-employment of such eligible individuals shall be in terms of a regular academic year appointment beginning with the fall quarter, except that other terms may be worked out by mutual agreement.

(6) All faculty terminated under the provisions of this section and who are subsequently rehired as indicated in (5) above shall retain all accrued benefits such as annual increments, tenure and previous years of service.

**401.43.32 Fiscal Exigency.** Whenever the President has reason to believe that an institutional fiscal exigency may occur, he shall notify the Academic Senate of the nature of the expected emergency. The Senate Business Affairs Council shall then assess the circumstances set forth in the President's message and submit its findings within ten (10) faculty working days in a report to the President, the Academic Senate, and the Board of Trustees. The Academic Senate shall consider the report and submit its recommendations to the President. The Board of Trustees shall be responsible for declaring any state of college-wide fiscal exigency, which determination shall be demonstrably *bona fide*.

Upon such declaration made by the Board of Trustees, the VPAA, the Academic Deans and a committee designated by the Academic Senate shall develop a plan for meeting the emergency. The Academic Senate shall consider the report and submit its recommendations to the President with all due speed. The final responsibility for institutional action shall rest with the President.

Support of instructional efforts will receive highest priority when an institutional fiscal exigency requires reduction of the funding of college programs.

Should faculty reductions be necessary, such reductions shall be made in accord with section 401.43.31. All faculty terminated will be given as much notice as possible and preferably at least twelve (12) months. If this is not possible, then notice within the dates set forth in section 401.43.11 shall be given unless late budget reductions are made by the state legislature and such reductions create extreme fiscal problems making it impossible to meet these notice standards. Under such conditions faculty appointments will be made (see Section 401.11.00) so as to provide not less than one quarter's notice or salary for those with up to two quarters of service; not less than two quarters' notice or salary for those with more than two and up to four quarters of service; and not less than three quarters' notice or salary for those with more than four quarters of service. Such provisions shall apply to full-time service only.

## 4.100 FACULTY RECRUITMENT AND THE APPOINTMENT PROCESS

### THE EVERGREEN STATE COLLEGE

The Evergreen curricular program demands motivation and a range of competencies not always required of faculty in colleges and universities whose offerings are organized around departmental structures. Some of the characteristics which we will continue to seek in prospective faculty members are:

1. demonstrated ability and desire to reach through the exploratory, cooperative seminar mode;
2. previous experience or clearly expressed desire to participate in interdisciplinary teaching;
3. demonstrated expertise in one or more fields of study and a willingness to participate with students in learning new fields;
4. willingness and ability to work as a member of a coordinated studies team;
5. willingness to act as a mentor or guide in tutorials with contract students;
6. willingness to participate in TESC governance activities, task forces, etc.;
7. commitment to teaching new directions in higher education;

NOTE: Such matters as sexual preference and political ideology are private matters and thus will have no bearing on a person's appointment or re-appointment to the Evergreen faculty.

Every member of the faculty is encouraged to assist in the location of potential faculty. In general candidates will come from two sources:

1. Solicited candidates - names may be suggested and nominations made by faculty, deans, administrative staff, and others if submitted in writing along with a contacting address and a support letter of recommendation.
2. Unsolicited candidates - faculty and deans will review the files of unsolicited applicants. A specifically appointed faculty DTF may be required to assist with this work.

There will be no illegal/immoral discrimination of any kind in the process of faculty recruitment, appointment, or re-appointment. The College expressly prohibits discrimination against any person on the basis of race, sex, age, religion, national origin, physical disability, sexual preference or political activity.

The dean who has the recruitment desk will help prospective candidates complete an application file. After a file is completed, and if the candidate appears to have abilities which are deemed desirable for TESC's program, the dean of the recruitment desk will ask an 8 - 10 member faculty team representing various disciplines to serve as a reviewing committee. These individuals will read the file and evaluate the candidate in terms of the criteria listed above.

Written comments by each reader should be added to the file at this point. Files will be distributed for review to as many campus community members as are available to participate in the recruiting process. Candidates ranked as Very Strong or Strong will be posted for the full faculty to see, and their files made available to any others who wish to read and enter written comments in the candidate's file. If the budget allows for it, candidates ranked as Very Strong through this process would be brought to the campus for interviews. When this is not possible, interviews will be conducted on the road and should be carried out by more than one interviewer. A special effort will be made to cover any particular questions raised by the readers of the file and answers will be included in the written comments of the interviewers.

The final decision on the candidate's suitability will be made by the deans, keeping in mind the staffing needs for the College and after final consultations with the faculty who have contributed seriously to the rating process. The full community will receive periodic progress reports on the status of the candidate under active consideration. The candidate will also be kept informed of his/her status as quickly as possible after the interviews. Final recommendations of the deans will be forwarded to the provost and the president. Upon approval, the deans will negotiate the terms of the appointment and the provost will issue the formal appointment papers.

## 4.300 ACADEMIC RANK AT EVERGREEN

The Evergreen State College will appoint all faculty to the rank of "Faculty Member" without any hierarchical distinction in titles. In those cases where indication of a professional speciality is relevant, designation of the particular discipline or disciplines from which the faculty member comes can be made in parentheses, e.g., "Faculty Member (Biology)."

# 4.400 FACULTY EVALUATION

## Philosophy

Faculty evaluation at Evergreen should be a pleasure. The primary purpose of Evergreen's faculty evaluation procedures is to provide reinforcement and feedback with respect to each faculty member's commitment to the teaching arts, the basis on which all Evergreen faculty appointments are made.

Unfortunately, most institutions of higher education still make little provision for learning the art of teaching. With only the rarest of exceptions, American colleges have no real apprentice system for developing the teacher's craft. The assistant professor is not associated with the full professor in the enterprise of teaching. Junior professors are simply paid less and have less power in their departments. In the meantime they are busy publishing, or worrying about not publishing. Their seniors do not help them learn to teach. There is no reason why this should continue. Evergreen will provide members of the faculty with opportunities to learn to teach, to experiment, to acquire intellectual breadth and depth, and to get acquainted with students free from the usual constraints of specialized discipline and department.

Because of the unique structure of the college, the faculty member will have the opportunity to do things he or she would never feel free to try in a discipline-bound department. Moreover, she or he will have the experienced staff to lean on for advice and assistance. They will provide a reservoir of experience in small-group teaching.

Well-designed programs will come to nothing unless we can help each other discover and perfect the art of teaching. Every dean and coordinator will be charged with the responsibility of helping each member of his or her faculty in this very difficult but exciting enterprise.

## The Three-Year Evaluation Cycle

Faculty eveluation is to be viewed as an ongoing process occurring in three-year cycles. Each year a regular faculty member is to have an evaluation session with her or his dean at which time portfolios are to be exchanged

and their contents discussed. In the first and third year of a regular faculty three-year contract the evaluation sessions are primarily directed toward aiding continued growth, the identification and discussion of areas of strength and weakness, and ways of improving upon these strengths and/or eliminating weaknesses (see example below). If in these Growth Evaluations the deans sees deficiencies which, if not corrected, might serve as ground for non-reappointment, those deficiencies must be clearly discussed, both in the dean's oral and written evaluation of the faculty member.

In the second year of a regular faculty three-year contract a Reappointment Evaluation will take place (see example below). This evaluation session will consist of a close scrutiny of the faculty member's portfolio taking special note of previous Growth Evaluations. Both dean and faculty member will assess the faculty member's growth and development over the contract period. For faculty members in their initial contract period there will be only one Growth Evaluation before the Reappointment Evaluation. Thereafter, there will be two Growth Evaluations (see example below). At the end of each second year of a three-year contract, after each regular faculty member has completed his or her Reappointment Evaluation session, the Provost will inform that person that he or she has been granted another three-year contract or will be terminated at the end of the current three-year contract.

An example of the evaluation cycle for a regular faculty member:

Spring 1974 individual receives a leter of appointment to the faculty with a three-year contract.

| Year of Contract | Academic Year | Time and Type of Evaluation |
|---|---|---|
| 1st | 1974-75 | Spring 1975 Growth Evaluation |
| 2nd | 1975-76 | Winter 1976 Reappointment Evaluation |
| 3rd | 1976-77 | Spring 1977 Growth Evaluation |
| 1st | 1977-78 | Spring 1978 Growth Evaluation |
| 2nd | 1978-79 | Winter 1979 Reappointment Evaluation |
| 3rd | 1979-80 | Spring 1980 Growth Evaluation |

2. All evaluations of your work by your faculty colleagues.
3. All evaluations you have written about the work of your faculty colleagues.
4. All evaluations of you by staff members.
5. All evaluations you have written about the work of staff members.
6. All evaluations of your work by your students.
7. All evaluations you have written of your students' work, both transcript and unofficial in-house evaluations.
8. Copies of your coordinated studies program covenants or group contract agreements between you and your students.
9. Copies of individual contracts you have drawn with students.
10. A thoughtful and critical self-evaluation of the past year's work, based largely on the documentation available in the portfolio. This essay should assess your successes, your lowpoints and disappointments and the areas in which you hope to make improvements during the following year in your performance within your teaching mode, within the faculty within the larger Evergreen community, with the non-Evergreen world, within your established fields of expertise, and in exploring virgin academic territories.

Each year, at least one of the academic deans will review this portfolio and self-evaluation while in return having her or his own portfolio reviewed by the faculty member. Each party will write a critical evaluative response for inclusion in the other's portfolio, addressing the questions of continued improvement in performance, areas of strength and weakness, progress being made since the previous evaluation, continued intellectual development in one's established fields and in exploring new academic frontiers.

Faculty Evaluation Schedule

Each year, during the first half of Winter Quarter, evaluation conferences will be scheduled with the deans for those faculty members who are in the

## The Faculty Portfolio

As one of the conditions for reappointment, each faculty member must maintain a portfolio representing work done at and for the college during the contract period. This document should be thought of as a cumulative three-year intellectual and professional history, carefully organized for readability, and critically reviewed and commented upon annually by one of the academic deans with the intent of encouraging growth and development in the arts of learning and teaching in the Evergreen environment. In the year prior to the end of a three-year contract, this cumulative portfolio will become the principal documentary evidence for a thorough evaluation by the Deans and the principal source for determining satisfactory performance in the criteria for reappointment or non-reappointment. After the reappointment evaluation the faculty member selects materials to be retained in her or his portfolio and begins to build a fully documented, inclusive portfolio to cover the next three year evaluation cycle. This process begins anew at the conclusion of each evaluation cycle.

The faculty portfolio should be more than just a personnel file. As it is a vehicle for the growth and development of each faculty member as a person learning and teaching, it should also be in part an autobiography and contain the materials for an autogiography. It is recognized that other items than those enumerated below may be contained in the portfolio and might in fact tell more about the growth and dvelopment of the faculty member as well as his or her contribution to the college than do the enumerated items themselves. It is the responsibility of the dean evaluating the faculty member to understand the portfolio as more than a personnel file and respond to it in its entirety as a unity rather than focus on only the enumerated items.

To be as complete and informative as possible, for each year of work the portfolio is expected to contain the following:

1. Both the self-evaluation and the dean's evaluation from the previous year.

second year of their three-year contracts and who are therefore approaching reappointment decisions. During the remaining portion of winter quarter and on into spring quarter as necessary, conferences will be scheduled with the remainder of the faculty. For the first category of faculty, reappointment decisions will be completed prior to the end of winter quarter, and notification given to each person. The evaluation process will proceed as follows:

1. A conference will be scheduled between a faculty member and one of the academic deans who has worked most closely with that faculty member during the current academic year. (Among other working relationships possible, the dean should have visited the faculty member's academic program on more than one occasion during the current academic year.)
2. Before the scheduled conference, the dean and the faculty member should exchange portfolios. Both the dean and the faculty member should prepare written responses for inclusion in the portfolio of the following year.
3. For the reappointment cases, shortly after the conference sessions are ended, the deans will meet and jointly prepare a recommendation in writing on each faculty member to be submitted to the Provost, with a copy to the faculty member involved.

The Dean's Role in the Evaluation Process

Crucial to the successful funcioning of the evaluation process is the dean's fulfillment of her or his responsibilities. The dean should be sure to provide time during the winter and spring quarters for a full review of each faculty member's portfolio and a thorough discussion of each faculty member's experience. Insofar as possible, the deans should also provide that every faculty member is assigned to a different dean each year. The dean's responsibility is particularly great with respect to faculty members for whom deficiencies are indicated. It is important that the dean state and explain each deficiency clearly and specifically in writing and make sure

that the faculty member who has been so informed is assigned to another dean the following year. It is then the joint responsibility of both deans to work together to attempt to correct any deficiencies which have been identified. Where appropriate to a deficiency, it is also advisable that the faculty member be assigned to a coordinated studies team made up of experienced faculty especially capable of helping other faculty improve their performance. Finally, the dean should be open to the possibility of seeking other special assistance in or outside the college for faculty members who request that assistance in resolving their difficulties.

4.500 REAPPOINTMENT AND NON-REAPPOINTMENT
THE EVERGREEN STATE COLLEGE

Reappointment decisions will be guided by satisfactory performance in each of the following:

1. Willingness and ability to teach in both Coordinated Studies and Contracted Studies.
2. Adherence to a faculty team agreement or covenant.
3. The keeping of a faculty portfolio and participating in annual faculty-dean evaluations as defined in the section on faculty evaluation.
4. Participation in Coordinated Studies faculty seminars.
5. Willingness and ability to devote at least one third of a three year contract to the development of interdisciplinary competence.
6. Participation in TESC activities, in addition to teaching, such as disappearing task forces (DTF's), community days, sounding board.
7. The completion of student credit reports and student evaluations in a timely fashion in accordance with current academic policies.

We subscribe to the AAUP's 1940 Statement of Principles on Academic Freedom and Tenure as modified by the following provisions designed to tailor this statement to our specific educational objectives:

1. It is the policy of The Evergreen State College that no faculty member will be separated from the college because of written or spoken views, according to the guarantees of the First Amendment.
2. The principles governing academic freedom at Evergreen apply to all members of the faculty.
3. A regular faculty appointment is for a three-year contract. A regular faculty member must be evaluated annually and informed in writing of any deficiencies which might be cause for non-reappointment. Prior to April 15 of the second year, each regular faculty member must be informed whether he or she is to be re-appointed for another three-year contract or terminated. The regular faculty member to be terminated must receive a written

statement of the reasons upon which the decision not to reappoint was based. A regular faculty member who has not been advised otherwise by April 15 of the second year of his or her current three-year contract will be awarded a new three year contract at the end of that current contract period. Except as provided in 4. below, no regular faculty member may be terminated for reasons of which he or she was not previously informed during the annual evaluation prior to the one for the year in which the decision to terminate was made. Only the seven criteria for reappointment and non-reappointment previously presented may be applied to that regular faculty member in making the decision for reappointment or non-reappointment to a new three-year contract. Increases in salary and fringe benefits may, however, be made at any time during the life of the contract.

4. The only reason for which a regular faculty member's appointment may be terminated prior to the end of his or her three-year contract are the necessity for a campus-wide reduction-in-force as provided in section 4.600 of the Faculty Handbook or the result of procedures carried out under the provisions of COG, section 2.200 of the Faculty Handbook.

5. A regular faculty member who has been advised that he or she will not be reappointed for another three-year contract shall have access to the following adjudicative procedure. In all cases it is the decision of the aggrieved faculty member to request the grievance procedure as outlined below within 60 days of receipt of the notice of non-reappointment, and in which it is assumed the burden of proof lies with the institution:

   The faculty member and the institution will each select two representatives from within the college to reflect the opinions of the two sides in dispute. The four members of this ad hoc committee will select an impartial fifth person from inside or outside the college to act as judge. After consultation, investigation and hearings, the decisions of the judge will be binding on both sides.

The hearing must begin as soon as possible after the faculty member formally requests it, and in [illegible] case more than two weeks thereafter. In cases of fai[illegible]ure to ag[illegible] [illegible] judge, he or she will be chosen at random, by the Chairman of the Board of Trustees in a public meeting, from a list of three persons agreed upon in advance between a faculty task force and the trustees. The potential hearing officers will serve staggered terms of no longer than three years.

## Appointment

The appointment of any faculty member shall be on the basis of the requirements of the position and the qualifications of the individual applicant for the position.

All full-time appointments to the rank of instructor or higher are of three kinds:

(1) probationary appointments (non-tenured)
(2) appointments with continuous tenure
(3) limited term contracts
(4) part-time contracts

## Faculty Contracts

The terms and conditions of employment of a faculty member are contained in the faculty member's contract with the Board of Trustees.

## Initial Appointment

The terms and conditions of the initial appointment will be contained in the contract with the Board of Trustees. These terms and conditions will be proposed in a letter of offer from the Vice President for Academic Affairs/Provost. This letter will be the sole basis for determining the contract. Among the items to be defined in the statement shall be the position to be filled, academic rank, salary, specification of appointment (permanent, probationary or temporary), any arrangement regarding the evaluation of previous experience, expectations with respect to the completion of advance degrees in relation to rank and tenure, and any other special or limiting provisions. The Board of Trustees must approve all conditions of initial employment, and all renewal agreements until tenure is granted.

The faculty member will be advised, at the time of initial appointment, of the substantive standards and procedures generally employed in decisions affecting renewal and tenure. A faculty member will be advised of, and provided with a copy of any special standards adopted by the faculty member's department or school. The faculty member will be advised of the time when decisions affecting renewal or tenure are ordinarily made, and will be given the opportunity to submit material which may be helpful to an adequate consideration of his/her renewal or tenure.

## Probationary (Non-Tenured) Appointments

Probationary appointments may be for one year, or for other stated periods, subject to renewal. For conditions of probationary service, see section on tenure.

## Evaluation of Non-Tenured Faculty

Non-tenured faculty shall be evaluated annually until the Board of Trustees grants tenure or does not reappoint. The annual evaluation shall be completed by March 15 of each year and shall contain a statement of all matters relative to eligibility for the acquisition of tenure, where appropriate.

If a college is organized into departments, formal evaluation is to be summarized in an annual letter from the department chairperson to the Dean with a copy to the non-tenured faculty member and the Vice President for Academic Affairs. This letter is to contain the administrator's report and a synthesis of comments from the evaluating body of the department. Tenured members have the responsibility of participating in the evaluation. Evaluations from all non-tenured members of the department should be invited but not required.

If a college is not organized into departments, the annual letter of evaluation is made by the Dean to the Vice President for Academic Affairs/Provost with a copy to the faculty member. Members of the respective college faculty participate in the process in the same manner as department faculty in the colleges with departments.

## Tenured Appointments

Faculty members on continuous tenure normally by July 1 receive statements from the President or his designate to that effect and setting forth the salary step and associated salary which the faculty member will receive the following academic year. Conditions of this continuing appointment will be stated in the President's letter.

## Limited Term Contracts

Limited term contracts are those appointments which are not expected to lead to any tenure consideration. These include appointments of one to three years, not to extend beyond six years, such as temporary replacement of regular faculty on leave, or to staff an experimental program, or reappointment of retired faculty, or other so-called non-tenure track appointments.

## Part-Time Contracts

Part-time faculty are those non tenured faculty members employed for less than 1.0 FTE during the academic year. (Tenured faculty on reduced load or on leave are not considered part-time faculty.)

Part-time faculty are entitled to the same Academic Freedom as full-time faculty, and participate in the affairs of the department or other academic unit at the discretion of that department or unit. Faculty voting privileges are limited to affairs of the department or academic unit and are at the discretion

of the unit. Part-time employment does not count as probationary service for tenure purposes.

Part-time faculty:

(a) are eligible for the faculty insurance plan if employed at least half-time on a quarter-to-quarter basis. (See page 6.)
(b) participate on Social Security (RSDHI).
(c) are eligible for TIAA/CREF retirement plan if employed at least half-time for two quarters. (See page 8.)
(d) may receive disability benefits at the discretion of the Vice President for Academic Affairs/Provost to the end of appointment period. (See page 7.)

## Equal Employment Opportunity Policy

It is the policy of the Board of Trustees of Western Washington State College to provide equal employment opportunity for all employees and applicants for employment regardless of race, color, religion, national origin, sex, age, marital status, or the presence of any sensory, mental or physical handicap.

It is the responsibility of each and every member of the college community to insure that meaningful equal employment opportunity exists.

The College will continue to cooperate with agencies of the federal and state governments in fulfilling its legal and moral obligations in Equal Employment Opportunity.

The Board of Trustees further pledges that every effort will be made to provide resources for corrective and affirmative action programs to implement the above policy.

Details of the implementation of this policy are contained in a publication entitled "Equal Employment Opportunity Policy and Affirmative Action Nondiscrimination Program," which is available from the College Affirmative Action Officer.

## Conflict of Interest Resulting from Family Relationship

It is the objective of Western Washington State College to employ and retain the best qualified persons as members of the faculty, administration and staff. However, the protection of the individual as well as of the College requires certain safeguards from potential conflicts of interest. Therefore, the following policies regarding employment of members of the same family shall apply. Family members shall be defined as spouses, siblings, or parent and offspring.

1. Members of the same family may be employed by Western Washington State College on the faculty in the same department or in different departments so long as each person meets the standards of qualification.

2. No faculty member, department chairperson, academic dean or other academic administrative officer at Western Washington State College shall initiate or in any way participate in any decision which involves the appointment, evaluation, promotion, retention or dismissal of a related person or which might have a direct effect on a related person's condition of employment with the College. Whenever a department chairperson, academic dean or other administrative officer would in the normal course of business initiate or participate in a decision prohibited under this subsection, the Vice President for Academic Affairs/Provost shall delegate the responsibility for such decision to an appropriate person.

## Qualification for Rank and Promotion

The total professional profile of an applicant for appointment or for promotion will be considered, but the primary weight for promotion will be given to accomplishments since appointment to the faculty or since last promoted, as the case may be.

### *Instructor*

An applicant may be appointed to the rank of instructor if the person shows promise of becoming an effective teacher and scholar. The applicant should have completed, or nearly completed, formal professional training, which in most cases will be evidenced by completion of the doctoral degree or the accepted terminal degree for the discipline. An instructor not promoted to assistant professor by the end of the fourth year of service at WWSC will not be reappointed. Tenure is not granted to instructors.

### *Assistant Professor*

To be appointed or promoted to the rank of assistant professor, a person shall normally possess the doctorate or the accepted terminal degree for the discipline. An assistant professor should also be able to show evidence of effective teaching and scholarly activity beyond the promise of such effectiveness expected of an instructor. In exceptional cases the establishment of a superior record in one of these areas may be sufficient.

### *Associate Professor*

For appointment or promotion to this rank, a person shall normally possess the doctorate or accepted terminal degree for the discipline. This rank requires a record of substantial achievement in both teaching and scholarship. In exceptional cases an outstanding record of achievement in one of these areas may be sufficient. Contributions to academic policy and program are also expected.

### *Professor*

For appointment or promotion to this rank, a person shall normally possess the doctorate or the accepted terminal degree for the discipline. Evidence of outstanding and mature scholarship is required for this rank as is strong evidence of effective teaching. Significant contributions to academic policy and program are expected, as well.

Eventual promotion to the rank of Professor is not to be earned by long service alone, and it is not expected that all faculty members will attain this rank.

### *Lecturer*

Teaching faculty employed on a temporary basis or otherwise outside the usual structure of rank and tenure are designated lecturers. Initial appointments to the post of lecturer may be made for a stated period of two years or less. The appointment expires at the end of the contract period unless reappointed. In no case shall a person hold appointment as lecturer longer than six years. Lecturers may participate in departmental affairs at the discretion of the department.

### *Special Appointment*

A scholar or artist of recognized outstanding attainment may be appointed to any academic rank, including that of professor, regardless of the academic degree held, provided that person's contribution is relevant to the curriculum of the college.

### *Affiliated Teaching Faculty*

Departments may appoint persons to perform specialized teaching duties in positions that do not carry tenure, rank, promotion or faculty voting privileges. Examples of such positions are affiliated teachers of music, joint appointment of public school teachers for student teaching supervision, consultants and adjunct professors.

### *Research Associate*

A scholar of recognized attainment may be appointed as a research associate to conduct or direct research under support from an outside agency. Research associates are not granted tenure, rank, promotion or faculty voting privileges.

### *Visiting Ranks*

An individual may be appointed as visiting instructor, visiting assistant professor, visiting associate professor, or visiting professor, provided the individual qualifies for the rank and the appointment is clearly of a temporary nature.

## Tenure Regulations

The Board of Trustees grants tenure to faculty who have served a period of probationary service and who in the judgment of the Board of Trustees are capable of making an outstanding contribution to the College. Tenure is granted only to those who hold the rank of Assistant Professor, Associate Professor, or Professor.

The total period of full-time service prior to the acquisition of tenure will not exceed seven years, including all previous full-time service with the rank of instructor or higher in other institutions of higher learning, except that the probationary period at Western Washington State College may extend to as much as four years, even if the total full-time service in the profession thereby exceeds seven years. The terms of such extension will be stated in writing at the time of initial appointment. Scholarly leave of absence for one year or less, except for work on an advanced degree, will count as part of the probationary period as if it were prior service at another institution, unless the individual and the institution agree in writing to an exception to this provision at the time the leave is granted. If the department and administration agree, scholars of established reputation may be granted tenure upon employment.

The faculty member will be evaluated for tenure not later than the sixth year of service, or, if the probationary period is shorter as a result of prior experience, not later than the year prior to the final year of probationary service. Recommendations are initiated in the department and are reviewed by the appropriate tenure and promotion committee, dean, Vice President for Academic Affairs/Provost and President. Recommendations concerning tenure will be made by the President to the Board of Trustees at their March meeting. The Board of Trustees will act on these recommendations before June 14 of that same year. If the Board of Trustees fails to grant tenure by the sixth year of service, or if the probationary period is shorter as a result of prior service, by the year prior to the final year of probationary service, the contract for the following year will be a terminal contract. In no case shall these probationary contracts for those holding tenurable rank be extended beyond a seven year period.

For all new appointments with effective date of employment of September 1, 1976, and thereafter, the granting of tenure must not result in exceeding the maximum faculty staffing level limit of the academic unit concerned.

## Faculty Load

Faculty load is generally construed to encompass classroom and laboratory instruction, preparation for teaching, research, scholarly and creative activities, scheduled office hours, student advisement, committee responsibilities, and occasional special assignment.

## Faculty Personnel Files

1. Copies of all faculty personnel files, excluding payroll, grievance, and tenure and promotion records, shall be located in the office of the Vice President for Academic Affairs/Provost and the Dean of the appropriate college.

2. Materials appropriately included in the faculty member's file will be an updated vita; annual reports as submitted to the Dean; copies of all communications with the faculty member regarding appointment and terms of contract; the chairperson's annual letters of evaluation of non-tenured faculty; letters of commendation and/or letters critical of a faculty member. A copy of any such letter of commendation and/or letter critical of a faculty member shall be sent to the faculty member at the time the letter is placed in his/her file.

All personnel records shall be in writing. A faculty member shall have a right to inspect all material in his/her file.

3. Placement files and other confidential recommendations received prior to initial employment of a faculty member are not appropriate materials for the personnel file. These materials are kept sealed and in the office of the Vice President for Academic Affairs/Provost for a period of seven years, at which time they are destroyed.

Tenure and promotion materials are likewise kept separate in the office of the Vice President for Academic Affairs/Provost and are confidential.

4. On presentation of a written request, a faculty member shall be furnished a copy of any material in his/her file. No items may be removed from a faculty member's file, except for brief inspection or copying.

5. The faculty member shall have the right to answer in writing any material filed in his/her personnel file, and the faculty member's answer shall be attached to the file copy.

6. The Vice President for Academic Affairs/Provost shall require the execution of a written request, and that request must be approved by the faculty member, prior to the examination of any personnel file by persons other than authorized administrative personnel. The faculty member shall be provided with a copy of such written request forms.

APPENDIX D:

K-12 Statute

**28A.58.450 Adverse change in contract status of certificated employee——Determination of probable cause——Notice——Opportunity for hearing.** In the event it is determined that there is probable cause or causes for a teacher, principal, supervisor, superintendent, or other certificated employee, holding a position as such with the school district, hereinafter referred to as "employee", to be discharged or otherwise adversely affected in his or her contract status, such employee shall be notified in writing of that decision, which notification shall specify the probable cause or causes for such action. Such determinations of probable cause for certificated employees, other than the superintendent, shall be made by the superintendent. Such notices shall be served upon that employee personally, or by certified or registered mail, or by leaving a copy of the notice at the house of his or her usual abode with some person of suitable age and discretion then resident therein. Every such employee so notified, at his or her request made in writing and filed with the president, chairman of the board or secretary of the board of directors of the district within ten days after receiving such notice, shall be granted opportunity for a hearing pursuant to RCW 28A.58.455 to determine whether or not there is sufficient cause or causes for his or her discharge or other adverse action against his contract status.

In the event any such notice or opportunity for hearing is not timely given, or in the event cause for discharge or other adverse action is not established by a preponderance of the evidence at the hearing, such employee shall not be discharged or otherwise adversely affected in his contract status for the causes stated in the original notice for the duration of his or her contract.

If such employee does not request a hearing as provided herein, such employee may be discharged or otherwise adversely affected as provided in the notice served upon the employee.

Transfer to a subordinate certificated position as that procedure is set forth in RCW 28A.67.073 shall not be construed as a discharge or other adverse action against contract status for the purposes of this section. [1975-'76 2nd ex.s. c 114 § 2; 1973 c 49 § 1; 1969 ex.s. c 34 § 13; 1969 ex.s. c 223 § 28A.58.450. Prior: 1961 c 241 § 2. Formerly RCW 28.58.450.]

**Savings——Severability——1975-'76 2nd ex.s. c 114:** See notes following RCW 28A.58.137.

*Minimum criteria for the evaluation of certificated employees, including administrators——Procedure——Scope——Penalty: RCW 28A.67.065.*

*RCW 28A.58.450 not applicable to contract renewal of school superintendent: RCW 28A.58.137.*

*Transfer of administrator to subordinate certificated position——Procedure: RCW 28A.67.073.*

**28A.58.455 Adverse change in contract status of certificated employee, including nonrenewal of contract——Hearings——Procedure.** (1) Any employee receiving a notice of probable cause for discharge or adverse effect in contract status pursuant to RCW 28A.58.450, as now or hereafter amended, or any employee, with the exception of provisional employees as defined in RCW 28A.67.072, receiving a notice of probable cause for nonrenewal of contract pursuant to RCW 28A.67.070, as now or hereafter amended, shall be granted the opportunity for a hearing pursuant to this section.

(2) In any request for a hearing pursuant to RCW 28A.58.450 or 28A.67.070, as now or hereafter amended, the employee may request either an open or closed hearing. The hearing shall be open or closed as requested by the employee, but if the employee fails to make such a request, the hearing officer may determine whether the hearing shall be open or closed.

(3) The employee may engage counsel who shall be entitled to represent the employee at the prehearing

conference held pursuant to subsection *(5) of this section and at all subsequent proceedings pursuant to this section. At the hearing provided for by this section, the employee may produce such witnesses as he or she may desire.

(4) In the event that an employee requests a hearing pursuant to RCW 28A.58.450 or 28A.67.070, as now or hereafter amended, a hearing officer shall be appointed in the following manner: Within ten days following the receipt of any such request the board of directors of the district or its designee and the employee shall each appoint one nominee, each of whom shall be a member in good standing of the Washington state bar association. Within five days following the appointment of such nominees they shall jointly appoint a hearing officer who shall be a member in good standing of the Washington state bar association. Should said nominees fail to agree as to who should be appointed as the hearing officer, either the board of directors or the employee, upon appropriate notice to the other party, may apply to the presiding judge of the superior court for the county in which the district is located for the appointment of such hearing officer, whereupon such presiding judge shall have the duty to appoint a hearing officer who shall be a member in good standing of the Washington state bar association and who shall, in the judgment of such presiding judge, be qualified to fairly and impartially discharge his or her duties. Nothing herein shall preclude the board of directors and the employee from stipulating as to the identity of the hearing officer in which event the foregoing procedures for the selection of the hearing officer shall be inapplicable. The district shall pay all fees and expenses of any hearing officer selected pursuant to this subsection.

(5) Within five days following the selection of a hearing officer pursuant to subsection (4) hereof, the board of directors or its designee shall schedule a prehearing conference to be held within such five day period. The employee shall be given written notice of the date, time, and place of such prehearing conference at least three days prior to the date established for such conference.

(6) The hearing officer shall preside at any prehearing conference scheduled pursuant to subsection (5) of this section and in connection therewith shall:

(a) Issue such subpoenas or subpoenas duces tecum as either party may request at that time or thereafter; and

(b) Authorize the taking of prehearing depositions at the request of either party at that time or thereafter; and

(c) Provide for such additional methods of discovery as may be authorized by the civil rules applicable in the superior courts of the state of Washington; and

(d) Establish the date for the commencement of the hearing, to be within ten days following the date of the prehearing conference, unless the employee requests a continuance, in which event the hearing officer shall give due consideration to such request.

(7) The hearing officer shall preside at any hearing and in connection therewith shall:

(a) Make rulings as to the admissibility of evidence pursuant to the rules of evidence applicable in the superior courts of the state of Washington; and

(b) Make other appropriate rulings of law and procedure.

(8) Except as provided in subsection (9) of this section, the board of directors of the district shall have the following duties and responsibilities in connection with any hearing conducted pursuant to this section:

(a) Not less than a quorum of the board shall hear all of the evidence admitted during the hearing.

(b) At the conclusion of the hearing, board members who have heard all of the evidence shall deliberate in private and shall reach a final decision by vote of a majority of the members participating at the hearing.

(c) Written notice of the final decision of the board of directors shall be sent to the employee as promptly as possible and in no event later than ten days after the conclusion of the hearing.

(9) In lieu of the hearing procedures provided for in subsections (7) and (8) of this section, the board at the time it schedules the prehearing conference pursuant to subsection (5) of this section, may elect, if the employee consents, to have the hearing conducted by the hearing officer without board participation and if the board so elects, it shall give written notice thereof to the employee at or before the time of said prehearing conference. The hearing officer shall have the following duties at any hearing conducted by the hearing officer without board participation:

(a) The hearing officer shall make rulings as to the admissibility of evidence pursuant to the rules of evidence applicable in the superior court of the state of Washington.

(b) The hearing officer shall make other appropriate rulings of law and procedure.

(c) Within ten days following the conclusion of the hearing the hearing officer shall transmit in writing to the board and to the employee, findings of fact and conclusions of law and final decision.

(10) Any final decision by the board or the hearing officer to nonrenew the employment contract of the employee, or to discharge the employee, or to take other action adverse to the employee's contract status, as the case may be, shall be based solely upon the cause or causes specified in the notice of probable cause to the employee and shall be established by a preponderance of the evidence at the hearing to be sufficient cause or causes for such action.

(11) All subpoenas and prehearing discovery orders shall be enforceable by and subject to the contempt and other equity powers of the superior court of the county in which the school district is located upon petition of any aggrieved party.

(12) A complete record shall be made of the hearing and all orders and rulings of the hearing officer and school board. [1975-'76 2nd ex.s. c 114 § 5.]

***Reviser's note:** Session law [1975-'76 2nd ex.s. c 114 § 5] language referred to prehearing conference held pursuant to "subsection (4) of this section"; since subsection (5) provided for such conference, reference has been so corrected.

**Savings——Severability——1975-'76 2nd ex.s. c 114:** See notes following RCW 28A.58.137.

**28A.58.460 Adverse change in contract status of certificated employee, including nonrenewal of contract——**

**Appeal from——Notice——Service——Filing——Contents.** Any teacher, principal, supervisor, superintendent, or other certificated employee, desiring to appeal from any action or failure to act upon the part of a school board relating to the discharge or other action adversely affecting his contract status, or failure to renew that employee's contract for the next ensuing term, within thirty days after his or her receipt of such decision or order, may serve upon the chairman of the school board and file with the clerk of the superior court in the county in which the school district is located a notice of appeal which shall set forth also in a clear and concise manner the errors complained of. [1969 ex.s. c 34 § 14; 1969 ex.s. c 223 § 28A.58.460. Prior: 1961 c 241 § 3. Formerly RCW 28.58.460.]

*RCW 28A.58.460 not applicable to contract renewal of school superintendent: RCW 28A.58.137.*

**28A.58.470 Adverse change in contract status of certificated employee, including nonrenewal of contract——Appeal from.——Certification and filing with court of transcript.** The clerk of the superior court, within ten days of his receipt of the notice of appeal shall notify in writing the chairman of the school board of the taking of the appeal, and within twenty days thereafter the school board shall at its expense file the complete transcript of the evidence and the papers and exhibits relating to the decision complained of, all properly certified to be correct. [1969 ex.s. c 223 § 28A.58.470. Prior: 1961 c 241 § 4. Formerly RCW 28.58.470.]

*RCW 28A.58.470 not applicable to contract renewal of school superintendent: RCW 28A.58.137.*

**28A.58.480 Adverse change in contract status of certificated employee, including nonrenewal of contract——Appeal from——Scope.** Any appeal to the superior court by an employee shall be heard by the superior court without a jury. Such appeal shall be heard expeditiously. The superior court's review shall be confined to the verbatim transcript of the hearing and the papers and exhibits admitted into evidence at the hearing, except that in cases of alleged irregularities in procedure not shown in the transcript or exhibits and in cases of alleged abridgment of the employee's constitutional free speech rights, the court may take additional testimony on the alleged procedural irregularities or abridgment of free speech rights. The court shall hear oral argument and receive written briefs offered by the parties.

The court may affirm the decision of the board or hearing officer or remand the case for further proceedings; or it may reverse the decision if the substantial rights of the employee may have been prejudiced because the decision was:

(1) In violation of constitutional provisions; or

(2) In excess of the statutory authority or jurisdiction of the board or hearing officer; or

(3) Made upon unlawful procedure; or

(4) Affected by other error of law; or

(5) Clearly erroneous in view of the entire record as submitted and the public policy contained in the act of the legislature authorizing the decision or order; or

(6) Arbitrary or capricious. [1975-'76 2nd ex.s. c 114 § 6; 1969 ex.s. c 34 § 15; 1969 ex.s. c 223 § 28A.58.480. Prior: 1961 c 241 § 5. Formerly RCW 28.58.480.]

**Savings——Severability——1975-'76 2nd ex.s. c 114:** See notes following RCW 28A.58.137.

*RCW 28A.58.480 not applicable to contract renewal of school superintendent: RCW 28A.58.137.*

**28A.58.490 Adverse change in contract status of certificated employee, including nonrenewal of contract——Appeal from——Costs, attorney's fee and damages.** If the court enters judgment for the employee, and if the court finds that the probable cause determination was made in bad faith or upon insufficient legal grounds, the court in its discretion may award to the employee a reasonable attorney's fee for the preparation and trial of his appeal, together with his taxable costs in the superior court. If the court enters judgment for the employee, in addition to ordering the school board to reinstate or issue a new contract to the employee, the court may award damages for loss of compensation incurred by the employee by reason of the action of the school district. [1975-'76 2nd ex.s. c 114 § 7; 1969 ex.s. c 34 § 16; 1969 ex.s. c 223 § 28A.58.490. Prior: 1961 c 241 § 6. Formerly RCW 28.58.490.]

**Savings——Severability——1975-'76 2nd ex.s. c 114:** See notes following RCW 28A.58.137.

*RCW 28A.58.490 not applicable to contract renewal of school superintendent: RCW 28A.58.137.*

**28A.58.500 Adverse change in contract status of certificated employee, including nonrenewal of contract——Appeal from——To appellate court.** Either party to the proceedings in the superior court may appeal the decision to the supreme court or the court of appeals of this state as any other civil action is appealed. [1971 c 81 § 71; 1969 ex.s. c 223 § 28A.58.500. Prior: 1961 c 241 § 7. Formerly RCW 28.58.500.]

*RCW 28A.58.500 not applicable to contract renewal of school superintendent: RCW 28A.58.137.*

**28A.58.510 Adverse change in contract status of certificated employee, including nonrenewal of contract——Appeal from——Other statutes not applicable.** The provisions of chapter 28A.88 RCW shall not be applicable to RCW 28A.58.450 through 28A.58.500. [1969 ex.s. c 223 § 28A.58.510. Prior: 1961 c 241 § 8. Formerly RCW 28.58.510.]

*RCW 28A.58.510 not applicable to contract renewal of school superintendents: RCW 28A.58.137.*

**28A.58.515 Adverse change in contract status of certificated employee, including nonrenewal of contract——Appeal from——Direct judicial appeal, when.** In the event that an employee, with the exception of a provisional employee as defined in RCW 28A.67.072, receives a notice of probable cause pursuant to RCW 28A.58.450 or 28A.67.070, as now or hereafter amended, stating that by reason of a lack of sufficient funds or loss of levy election the employment contract of such employee should not be renewed for the next ensuing school term or that the same should be adversely affected, the

employee may appeal any said probable cause determination directly to the superior court of the county in which the school district is located. Such appeal shall be perfected by serving upon the secretary of the school board and filing with the clerk of the superior court a notice of appeal within ten days after receiving the probable cause notice. The notice of appeal shall set forth in a clear and concise manner the action appealed from. The superior court shall determine whether or not there was sufficient cause for the action as specified in the probable cause notice, which cause must be proven by a preponderance of the evidence, and shall base its determination solely upon the cause or causes stated in the notice of the employee. The appeal provided in this section shall be tried as an ordinary civil action: *Provided*, That the board of directors' determination of priorities for the expenditure of funds shall be subject to superior court review pursuant to the standards set forth in RCW 28A.58.480, as now or hereafter amended: *Provided further*, That the provisions of RCW 28A.58-.490 and 28A.58.500, as now or hereafter amended, shall be applicable thereto. [1975-'76 2nd ex.s. c 114 § 8; 1973 c 49 § 3; 1969 ex.s. c 34 § 18. Like section formerly RCW 28.58.515.]

**Savings——Severability——1975-'76 2nd ex.s. c 114:** See notes following RCW 28A.58.137.

*RCW 28A.58.515 not applicable to contract renewal of school superintendent: RCW 28A.58.137.*

**28A.67.065 Minimum criteria for the evaluation of certificated employees, including administrators——Procedure——Scope——Penalty.** (1) The superintendent of public instruction shall, on or before January 1, 1977, establish and may amend from time to time minimum criteria for the evaluation of the professional performance capabilities and development of certificated classroom teachers and certificated support personnel. For classroom teachers the criteria shall be developed in the following categories: Instructional skill; classroom management, professional preparation and scholarship; effort toward improvement when needed; the handling of student discipline and attendant problems; and interest in teaching pupils and knowledge of subject matter. Such criteria shall be subject to review by November 1, 1976, by four members of the legislature, one from each caucus of each house, including the chairpersons of the respective education committees.

Every board of directors shall, in accordance with procedure provided in RCW 41.59.010 through 41.59.170, 41.59.910 and 41.59.920, establish evaluative criteria and procedures for all certificated classroom teachers and certificated support personnel. The evaluative criteria must contain as a minimum the criteria established by the superintendent of public instruction pursuant to this section and must be prepared within six

months following adoption of the superintendent of public instruction's minimum criteria. The district must certify to the superintendent of public instruction that evaluative criteria have been so prepared by the district.

It shall be the responsibility of a principal or his or her designee to evaluate all certificated personnel in his or her school. During each school year all classroom teachers and certificated support personnel, hereinafter referred to as "employees" in this section, shall be observed for the purpose of evaluation at least twice in the performance of their assigned duties. Total observation time for each employee for each school year shall be not less than sixty minutes. Following each observation, or series of observations, the principal or other evaluator shall promptly document the results of the evaluation in writing, and shall provide the employee with a copy thereof within three days after such report is prepared. New employees shall be observed at least once for a total observation time of thirty minutes during the first ninety calendar days of their employment period.

Every employee whose work is judged unsatisfactory based on district evaluation criteria shall be notified in writing of stated specific areas of deficiencies along with a suggested specific and reasonable program for improvement on or before February 1st of each year. A probationary period shall be established beginning on or before February 1st and ending no later than May 1st. The purpose of the probationary period is to give the employee opportunity to demonstrate improvements in his or her areas of deficiency. The establishment of the probationary period and the giving of the notice to the employee of deficiency shall be by the school district superintendent and need not be submitted to the board of directors for approval. During the probationary period the evaluator shall meet with the employee at least twice monthly to supervise and make a written evaluation of the progress, if any, made by the employee. The evaluator may authorize one additional certificated employee to evaluate the probationer and to aid the employee in improving his or her areas of deficiency; such additional certificated employee shall be immune from any civil liability that might otherwise be incurred or imposed with regard to the good faith performance of such evaluation. The probationer may be removed from probation if he or she has demonstrated improvement to the satisfaction of the principal in those areas specifically detailed in his or her initial notice of deficiency and subsequently detailed in his or her improvement program. Lack of necessary improvement shall be specifically documented in writing with notification to the probationer and shall constitute grounds for a finding of probable cause under RCW 28A.58.450 or 28A.67.070, as now or hereafter amended.

The establishment of a probationary period shall not be deemed to adversely affect the contract status of an employee within the meaning of RCW 28A.58.450, as now or hereafter amended.

(2) Every board of directors shall establish evaluative criteria and procedures for all superintendents, principals, and other administrators. It shall be the responsibility of the district superintendent or his or her designee to evaluate all administrators. Such evaluation shall be based on the administrative position job description. Such criteria, when applicable, shall include at least the following categories: Knowledge of, experience in, and training in recognizing good professional performance, capabilities and development; school administration and management; school finance; professional preparation and scholarship; effort toward improvement when needed; interest in pupils, employees, patrons and subjects taught in school; leadership; and ability and performance of evaluation of school personnel.

(3) Each certificated employee shall have the opportunity for confidential conferences with his or her immediate supervisor on no less than two occasions in each school year. Such confidential conference shall have as its sole purpose the aiding of the administrator in his or her professional performance.

(4) The failure of any evaluator to evaluate or supervise or cause the evaluation or supervision of certificated employees or administrators in accordance with this section, as now or hereafter amended, when it is his or her specific assigned or delegated responsibility to do so, shall be sufficient cause for the nonrenewal of any such evaluator's contract under RCW 28A.67.070, as now or hereafter amended, or the discharge of such evaluator under RCW 28A.58.450, as now or hereafter amended. [1975 '76 2nd ex.s. c 114 § 3; 1975 1st ex.s. c 288 § 22; 1969 ex.s. c 34 § 22. Like section formerly RCW 28.67.065.]

**Savings——Severability——1975-'76 2nd ex.s. c 114:** See notes following RCW 28A.58.137.

**Effective date——1975 1st ex.s. c 288:** See RCW 41.59.940.

**Severability——1975 1st ex.s. c 288:** See RCW 41.59.950.

**Construction of chapter——Employee's rights preserved:** See RCW 41.59.920.

**Construction of chapter——Employer's responsibilities and rights preserved:** See RCW 41.59.930.

*RCW 28A.67.065 not applicable to contract renewal of school superintendent: RCW 28A.58.137.*

**28A.67.066 Annual salary schedules as basis for salaries of certificated employees.** Every school district by action of its board of directors shall adopt annual salary schedules and reproduce the same by printing, mimeographing or other reasonable method, which shall be the basis for salaries for all certificated employees in the district. [1969 ex.s. c 283 § 1. Formerly RCW 28.67.066.]

**Severability——1969 ex.s. c 283:** See note following RCW 28A.02.061.

**28A.67.070 Conditions and contracts of employment——Determination of probable cause for nonrenewal of contracts——Notice——Opportunity for hearing.** No teacher, principal, supervisor, superintendent, or other certificated employee, holding a position as such with a school district, hereinafter referred to as "employee", shall be employed except by written order of a majority of the directors of the district at a regular or special meeting thereof, nor unless he is the holder of an effective teacher's certificate or other certificate required by law or the state board of education for the position for which the employee is employed.

The board shall make with each employee employed by it a written contract, which shall be in conformity with the laws of this state, and except as otherwise provided by law, limited to a term of not more than one year. Every such contract shall be made in triplicate, one copy to be retained by the school district superintendent or secretary, one copy to be retained, after having been approved and registered, by the educational service district superintendent, and one copy to be delivered to the employee thereafter. No contract shall be offered by any board nor approved and registered by the educational service district superintendent for the employment of any employee who has previously signed an employment contract for that same term in another school district of the state of Washington unless such employee shall have been released from his or her obligations under such previous contract by the board of directors of the school district to which he or she was obligated. Any contract signed in violation of this provision shall be void.

In the event it is determined that there is probable cause or causes that the employment contract of an employee should not be renewed by the district for the next ensuing term such employee shall be notified in writing on or before May 15th preceding the commencement of such term of that determination, which notification shall specify the cause or causes for nonrenewal of contract. Such determination of probable cause for certificated employees, other than the superintendent, shall be made by the superintendent. Such notice shall be served upon the employee personally, or by certified or registered mail, or by leaving a copy of the notice at the house of his or her usual abode with some person of suitable age and discretion then resident therein. Every such employee so notified, at his or her request made in writing and filed with the president, chairman or secretary of the board of directors of the district within ten days after receiving such notice, shall be granted opportunity for hearing pursuant to RCW 28A.58.455 to determine whether there is sufficient cause or causes for nonrenewal of contract. If any such notification or opportunity for hearing is not timely given, the employee entitled thereto shall be conclusively presumed to have been reemployed by the district for the next ensuing term upon contractual terms identical with those which would have prevailed if his or her employment had actually been renewed by the board of directors for such ensuing term.

This section shall not be applicable to "provisional employees" as so designated in RCW 28A.67.072; transfer to a subordinate certificated position as that procedure is set forth in RCW 28A.67.073 shall not be construed as a nonrenewal of contract for the purposes of this section. [1975–'76 2nd ex.s. c 114 § 4; 1975 1st ex.s. c 275 § 133; 1973 c 49 § 2, 1970 ex.s. c 15 § 16. Prior: 1969 ex.s. c 176 § 143; 1969 ex.s. c 34 § 12; 1969 ex.s. c 15 § 2; 1969 ex.s. c 223 § 28A.67.070; prior: 1961 c 241 § 1; 1955 c 68 § 3; prior: (i) 1909 c 97 p 307 § 5; 1897 c 118 § 55; 1891 c 127 § 14; 1890 p 369 § 37; 1886 p 18 § 47; Code 1881 § 3200; RRS § 4851. (ii) 1943 c 52 § 1, part; 1941 c 179 § 1, part; 1939 c 131 § 1, part; 1925 ex.s. c 57 § 1, part; 1919 c 89 § 3, part; 1915 c 44 § 1, part; 1909 c 97 p 285 § 2, part; 1907 c 240 § 5, part; 1903 c 104 § 17, part; 1901 c 41 § 3, part; 1897 c 118 § 40, part; 1890 p 364 § 26, part; Rem. Supp. 1943 § 4776, part. Formerly RCW 28.67.070.]

**Savings——Severability——1975–'76 2nd ex.s. c 114:** See notes following RCW 28A.58.137.

**Severability——1970 ex.s. c 15:** See note following RCW 28A.02.070.

**Rights preserved——Severability——1969 ex.s. c 176:** See notes following RCW 28A.21.010.

*Minimum criteria for the evaluation of certificated employees, including administrators——Procedure——Scope——Penalty: RCW 28A.67.065.*

*RCW 28A.67.070 not applicable to contract renewal of school superintendent: RCW 28A.58.137.*

**28A.67.072 Conditions and contracts of employment——Nonrenewal of provisional employees——Procedure.** Notwithstanding the provisions of RCW 28A.67.070 as now or hereafter amended, every person employed by a school district in a teaching or other nonsupervisory certificated position shall be subject to nonrenewal of employment contract as provided in this section during the first year of employment by such district. Employees as defined in this section shall hereinafter be referred to as "provisional employees".

In the event the superintendent of the school district determines that the employment contract of any provisional employee should not be renewed by the district for the next ensuing term such provisional employee shall be notified thereof in writing on or before May 15th preceding the commencement of such school term, which notification shall state the reason or reasons for such determination. Such notice shall be served upon the provisional employee personally, or by certified or registered mail, or by leaving a copy of the notice at the place of his or her usual abode with some person of suitable age and discretion then resident therein. The determination of the superintendent shall be subject to the evaluation requirements of RCW 28A.67.065, as now or hereafter amended.

Every such provisional employee so notified, at his or her request made in writing and filed with the superintendent of the district within ten days after receiving such notice, shall be given the opportunity to meet informally with the superintendent for the purpose of requesting the superintendent to reconsider his or her decision. Such meeting shall be held no later than ten days following the receipt of such request, and the provisional employee shall be given written notice of the date, time and place of meeting at least three days prior thereto. At such meeting the provisional employee shall be given the opportunity to refute any facts upon which the superintendent's determination was based and to make any argument in support of his or her request for reconsideration.

Within ten days following the meeting with the provisional employee, the superintendent shall either reinstate the provisional employee or shall submit to the school district board of directors for consideration at its next regular meeting a written report recommending that the employment contract of the provisional employee be nonrenewed and stating the reason or reasons therefor.

A copy of such report shall be delivered to the provisional employee at least three days prior to the scheduled meeting of the board of directors. In taking action upon the recommendation of the superintendent, the board of directors shall consider any written communication which the provisional employee may file with the secretary of the board at any time prior to that meeting.

The board of directors shall notify the provisional employee in writing of its final decision within ten days following the meeting at which the superintendent's recommendation was considered. The decision of the board of directors to nonrenew the contract of a provisional employee shall be final and not subject to appeal.

This section applies to any person employed by a school district in a teaching or other nonsupervisory certificated position after June 25, 1976. This section provides the exclusive means for nonrenewing the employment contract of a provisional employee and no other provision of law shall be applicable thereto, including, without limitation, RCW 28A.67.070, and chapter 28A.88 RCW, as now or hereafter amended. [1975–'76 2nd ex.s. c 114 § 1.]

**Savings——Severability——1975–'76 2nd ex.s. c 114:** See notes following RCW 28A.58.137.

**28A.67.073 Conditions and contracts of employment——Transfer of administrator to subordinate certificated position——Procedure.** Any certificated employee of a school district employed as an assistant superintendent, director, principal, assistant principal, coordinator, or in any other supervisory or administrative position, hereinafter in this section referred to as "administrator", shall be subject to transfer, at the expiration of the term of his or her employment contract, to any subordinate certificated position within the school district. "Subordinate certificated position" as used in this section, shall mean any administrative or nonadministrative certificated position for which the annual compensation is less than the position currently held by the administrator.

Every superintendent determining that the best interests of the school district would be served by transferring any administrator to a subordinate certificated position shall notify that administrator in writing on or before May 15th preceding the commencement of such school term of that determination, which notification shall state the reason or reasons for the transfer, and shall identify the subordinate certificated position to which the administrator will be transferred. Such notice shall be served upon the administrator personally, or by certified or registered mail, or by leaving a copy of the notice at the place of his or her usual abode with some person of suitable age and discretion then resident therein.

Every such administrator so notified, at his or her request made in writing and filed with the president or chairman, or secretary of the board of directors of the district within ten days after receiving such notice, shall be given the opportunity to meet informally with the board of directors in an executive session thereof for the purpose of requesting the board to reconsider the decision of the superintendent. Such board, upon receipt of such request, shall schedule the meeting for no later than the next regularly scheduled meeting of the board, and shall notify the administrator in writing of the date, time and place of the meeting at least three days prior thereto. At such meeting the administrator shall be given the opportunity to refute any facts upon which the determination was based and to make any argument in support of his or her request for reconsideration. The administrator and the board may invite their respective legal counsel to be present and to participate at the meeting. The board shall notify the administrator in writing of its final decision within ten days following its meeting with the administrator. No appeal to the courts shall lie from the final decision of the board of directors to transfer an administrator to a subordinate certificated position: *Provided*, That in the case of principals such transfer shall be made at the expiration of the contract year and only during the first three consecutive school years of employment as a principal by a school district; except that if any such principal has been previously employed as a principal by another school district in the state of Washington for three or more consecutive school years the provisions of this section shall apply only to the first full school year of such employment.

This section applies to any person employed as an administrator by a school district on June 25, 1976 and to all persons so employed at any time thereafter. This section provides the exclusive means for transferring an administrator to a subordinate certificated position at the expiration of the term of his or her employment contract. [1975–'76 2nd ex.s. c 114 § 9.]

**Savings——Severability——1975–'76 2nd ex.s. c 114:** See notes following RCW 28A.58.137.

**28A.67.074 Conditions and contracts of employment——Supplemental contracts, when——Continuing contract provisions not applicable to.** No certificated employee shall be required to perform duties not described in the contract unless a new or supplemental contract is made, except that in an unexpected emergency the board of directors or school district administration may require the employee to perform other reasonable duties on a temporary basis.

No supplemental contract shall be subject to the continuing contract provisions of Titles 28A or 28B RCW. [1969 ex.s. c 283 § 2. Formerly RCW 28.67.074.]

**Severability——1969 ex.s. c 283:** See note following RCW 28A.02.061.

*RCW 28A.67.074 not applicable to contract renewal of school superintendent: RCW 28A.58.137.*